



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, September 4, 2019 6:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is 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

SPECIAL MEETING

6:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

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 McKay

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

RECOGNITIONS

Rita Chavez Medina

PROCLAMATIONS

Proclaiming September 2019 as National Preparedness Month
Jennifer Ponce

Honoring Jacob's Heart Children's Cancer Support Services and Proclaiming September 2019 as
Childhood Cancer Awareness Month
Fatima Alabbad

PRESENTATIONS

Healthier Kids Foundation
Sunny Ochoa and Maria Padilla

September 4, 2019

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)

PUBLIC COMMENT SUPPLEMENT

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE CONSULTANT AGREEMENT WITH MAZE & ASSOCIATES FOR AUDIT SERVICES FOR THREE FISCAL YEARS

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Maze & Associates for the not to exceed amount of \$111,853 for audit services for three fiscal years.

2. APPROVE UPDATES TO THE PUBLIC ART INVENTORY

Recommendation:

Approve updated Public Art Inventory.

3. APPROVE AGREEMENT WITH CIVIC FOUNDRY LLC FOR INFORMATION TECHNOLOGY SERVICES

Recommendation:

1. Approve agreement with Civic Foundry LLC for Information Technology management for a not to exceed amount of \$180,000; and
2. Authorize the City Manager to execute and administer the agreement.

4. APPROVE STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR THE SHOE PALACE PROJECT LOCATED AT 745 JARVIS DRIVE (PORTION OF ASSESSOR PARCEL NUMBERS 726-30-012 & 726-30-013)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Shoe Palace Project located at 745 Jarvis Drive (Portion of APNs: 726-30-012 & 726-30-013); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

5. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - ALTIMIRA - TRACT NO. 10411

Recommendation:

1. Accept the Subdivision Public Improvements for Altimira – Tract No. 10411;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

6. AWARD MORGAN HILL LIBRARY ADDITION PROJECT TO SELDEN & SON

Recommendation:

1. Approve the Morgan Hill Library Addition Project plans and specifications;
2. Award contract to Selden & Son for the Morgan Hill Library Addition Project in the amount of \$1,985,800;
3. Authorize expenditure of construction contingency funds not to exceed \$198,580; and
4. Authorize the City Manager to execute and administer the construction contract with Selden & Son pending review and approval by the City Attorney.

7. AWARD CENTENNIAL RECREATION CENTER POOL DECK RESURFACING PROJECT TO FLEXGROUND SURFACES, INC.

Recommendation:

1. Award contract to Flexground Surfaces, Inc. in the amount of \$56,224; and authorize the expenditure of contingency funds not to exceed \$20,000; and
2. Authorize the City Manager to execute and administer that certain construction contract with Flexground Surfaces, Inc.

8. ADOPT RESTATED INTERNAL REVENUE SERVICES (IRS) SECTION 125 FLEXIBLE BENEFITS PLAN DOCUMENT FOR THE CITY OF MORGAN HILL

Recommendation:

1. Adopt resolution approving the City of Morgan Hill's Section 125 flexible benefits plan; and
2. Authorize the City Manager, or designee, to serve as the Plan Administrator.

9. ADOPT THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULE EFFECTIVE DECEMBER 29, 2019

Recommendation:

Adopt the Management, Professional, and Confidential Employees Resolution and corresponding salary schedule effective December 29, 2019.

10. ADOPT RESOLUTION APPROVING APPLICATION FOR PER CAPITA PROP 68 GRANT FUNDING

Recommendation:

Adopt resolution authorizing a grant agreement with the State of California.

11. RATIFY CITY POSITION ON PENDING LEGISLATION SB 266 PUBLIC EMPLOYEES' RETIREMENT SYSTEM: DISALLOWED COMPENSATION: BENEFIT ADJUSTMENTS

Recommendation:

1. Receive legislative correspondence in opposition of SB 266 Public Employees' Retirement System: disallowed compensation: benefit adjustments; and
2. Ratify City's position.

12. APPROVE THE JULY 17, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

13. APPROVE THE JULY 26, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

14. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Open/close the public hearing;
2. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services; and
3. Adopt resolution updating the City's select Development Impact Fees.

Estimated Time: 30 Minutes

15. INTRODUCE ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH APPLETREE INVESTMENT, LLC. FOR A 6-LOT SINGLE-FAMILY RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVE LOCATED AT 18755 OLD MONTEREY ROAD. (APN 764-24-061) (OLD MONTEREY-KELLY VO PROJECT)

Recommendation:

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

Estimated Time: 15 Minutes

16. APPEAL OF THE PLANNING COMMISSION DISTRIBUTION OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21. THE APPLICANT REQUESTED 246 RESIDENTIAL BUILDING ALLOTMENTS AND WAS DENIED RDCS BUILDING ALLOTMENTS BY THE PLANNING COMMISSION. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 728-30-001, IS LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE. (FILE NO. AAE2019-0007 (RDCS2019-0006) HALF-DIVIDEND (FORMERLY BROOKFIELD)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt resolution denying the appeal and reaffirming the distribution of the Residential Development Control System (RDCS) Building Allotments for Fiscal Year 2020-21.

Estimated Time: 15 Minutes

OTHER BUSINESS

17. ACCEPT PRELIMINARY JUNE 2019 FINANCIAL AND INVESTMENT REPORT, CITY MANAGER SIGNATURE AUTHORITY REPORT, AND DIRECT THE CITY MANAGER TO TRANSFER THE FY2018-19 GENERAL FUND'S SURPLUS TO THE CITY'S PENSION AND OPEB TRUSTS

Recommendation:

1. Accept and file report; and
2. Direct the City Manager to transfer the FY2018-19 General Fund's surplus, pending completion of the year-end audit, to the City's Pension and OPEB Trusts.

Estimated Time: 10 Minutes

18. APPROVE RESPONSE TO GRAND JURY REPORT TITLED "INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY"

Recommendation:

Authorize the City Manager to file the Response to the Civil Grand Jury Report, "Inquiry into Governance of the Valley Transportation Authority", dated June 18, 2019 with the Presiding Judge of the Santa Clara County Superior Court.

Estimated Time: 15 Minutes

19. INTRODUCE ORDINANCE AMENDING CHAPTER 6.36- ANIMAL AND LAND USE, OF TITLE 6 - ANIMALS OF THE CITY OF MORGAN HILL MUNICIPAL CODE TO ALLOW HOBBYIST BEEKEEPING

Recommendation:

1. Waive first and second reading of Ordinance amending Chapter 6.36 "Animals and Land Use" to allow hobbyist beekeeping; and
2. Introduce Ordinance amending Chapter 6.36 "Animals and Land Use" to allow hobbyist beekeeping.

Estimated Time: 10 Minutes

20. PROVIDE DIRECTION REGARDING BUILDING ELECTRIFICATION INCENTIVES AND REQUIREMENTS INCLUDING REACH CODES

Recommendation:

Provide policy direction to staff on electrification initiatives.

Estimated Time: 20 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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



PUBLIC COMMENT: NEXT MR. REGULAR, SPECIAL, STUDY, SPECIAL, PUBLIC WORKS, PRIVATE RETIREMENT, AND/OR "MOBILITY MEMBERSHIP" of UTA & C&E.

FOLLOW-UP TO YOUR LATEST ON CAHSRA'S BULLET TRAIN: IT'S DEJAVU YOGI ALL OVER AGAIN

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: bholtzclaw@newsmedia.com; nmixter@newsmedia.com; rtdillon@garlic.com; shawna.freels@ci.gilroy.ca.us; ROLAND.VELASCO@CI.GILROY.CA.US; peter.leroe-munoz@ci.gilroy.ca.us; fred.tovar@ci.gilroy.ca.us; dion.bracco@ci.gilroy.ca.us; cat.tucker@ci.gilroy.ca.us; marie.blankley@ci.gilroy.ca.us; carol.marques@ci.gilroy.ca.us; rich.constantine@morganhill.ca.gov; mgr42@charter.net; gary@custom-1.com; ehoward1965@gmail.com; president@gilroyedc.org; askmike@garlic.com; sbcsuper@supervisor.co.san-benito.ca.us; info@sanbenitocog.org; onemorejones@yahoo.com; sallybettencourt@gmail.com; donpatloe@att.net; carl@reformcalifornia.org; jon@hjta.org

Date: Monday, July 15, 2019, 11:06 AM PDT

Dear Barry,

Here's follow-up in reply and rebuttal to your latest publication on CAHSRA's Bullet Train. It's been said before, but now more than ever needs to be resaid. What's wrong with the CAHSRA's Bullet Train? Everything.

I'm grateful to the expert assistance of Mr. Tom Rubin, former #1 top guy at L.A.'s transit agency. I previously submitted the first paper to Gilroy's then City Council, and to others. But, there are none so blind as those who refuse to see. Who's getting rich on this boondoggle? If we're already robbing gas & diesel taxes to fund already existing boondoggles, rail and highway, including BART, Caltrain, SMART Train, ACE Train, Lite Rail, County Transit, Dial-A-Ride, Paratransit, etc., run by unelected Directors appointed to their office at the transit agencies, why do we think that motorists can pay more, and cheat us out of the taxes we're paying for highways, streets and roads?

As I've said since 1996, to Senator Kopp, a/k/a "father of the Bullet Train," who turned against it after he saw what CAHSRA was doing, this is bad public policy, and unsound and unsustainable transport policy.

Why don't we listen to independent, unbiased expert opinion on this Trojan Horse Monstrosity? Here follows what our local leaders ought to be saying to CAHSRA in defense of the taxpayers in their cities and counties.

Joseph P. Thompson

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past President 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Charter Member, SBCCOG Citizens Rail Advisory Committee

Charter Member, SBCCOG Citizens Transit Task Force

Follwing from Thomas A. Rubin:

TAR: I'm happy to be of service.

As to the document you are referring to, I believe this is what you had in mind, from 2008:

The California High-Speed Rail Proposal: A Due Diligence Report

Received
City of Morgan Hill

JUL 22 2019

City Clerk

The California High-Speed Rail Proposal: A Due Diligence Report

Policy Study 370

Here is an update from 2013:

https://reason.org/wp-content/uploads/files/california_high_speed_rail_report.pdf

Here is the general Reason transportation site with many other papers on HSR, including many more recent:

[Mass Transit, High-Speed Rail, Light Rail, Buses and More](#)

Mass Transit, High-Speed Rail, Light Rail, Buses and More

No, I wasn't the author of any of these. I did do a detailed fact check and peer review of the first paper.

This courtesy of Thomas A. Rubin. - jpt

RE: THANK YOU!

From: Thomas A. Rubin (tarubin@earthlink.net)

To: translaw@pacbell.net

Date: Monday, July 15, 2019, 09:33 AM PDT

TAR: I'm happy to be of service.

As to the document you are referring to, I believe this is what you had in mind, from 2008:

<https://reason.org/policy-study/the-california-high-speed-rail/>

Here is an update from 2013:

https://reason.org/wp-content/uploads/files/california_high_speed_rail_report.pdf

Here is the general Reason transportation site with many other papers on HSR, including many more recent:

<https://reason.org/topics/transportation/mass-transit-and-light-rail/>

No, I wasn't the author of any of these. I did do a detailed fact check and peer review of the first paper.

I enjoy Napa and wine country tours, but I'm a teetotaler – no objections to responsible consumption, just never developed a taste for it. If you are ever hosting a group on such a tour, let me know – or we can come up with another excuse to get together.

Have fun, and keep the faith.

Tom Rubin

GET GOVERNMENT OUT OF THE TRANSPO-BUSINESS
VTA: CONVENED INSOLVENT - BORN BANKRUPT

10 years later: BANKRUPT EVERY DAY!

THE DISPATCH

WEEKEND

www.gilroydispatch.com

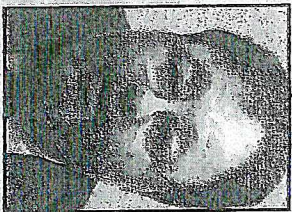
VTA on the brink of bankruptcy

► Committee explores a range of solutions, including taxes, to fund struggling transit agency

By JONATHAN JEISEL

Staff Writer

GILROY — The county's transit agency is at a financial crossroads, and Santa Clara County citizens and businesses could potentially face decisions about new taxes — or whether to borrow against existing taxes in the short-term for a new purpose — to help remedy the financial quagmire.



County Supervisor Don Gage

"What it will really boils down to is, 'Do people in the valley really want a transit system, and what do they want it to look like?'"

Officials with the Santa Clara Valley Transportation Authority say they face an estimated \$160 million annual deficit over the next 20 years and warned that the agency will run out of money within two years' time

unless dramatic steps are taken. That budget hole is forcing officials to consider major changes to how the agency's buses and light-rail trains are funded — and a centerpiece question at the moment is a search

for new revenues.

Nearly 85 percent of the VTA's operating budget is comprised of sales-tax revenues, which tend to be volatile and fluctuate dramatically along with the economy.

With the current downturn, agency revenues have dropped 33 percent in two years after seven consecutive quarters of declining sales taxes. That's a bad drop, stressed VTA spokeswoman Dina Braun.

"It's tough for any organization," she said.

So far, in response the agency has

Please turn to VTA, A10

AUG - 7 2019

City Clerk

Soviet Solutions Don't Work

* Don Was CTR of VTA when VTA was "worst in nation"

Time + SCOT + COGS BANKRUPTCY TOO.

From H.I.T. Story OF ALL US TRANSIT

A4 WEDNESDAY, MAY 2, 2007 GILROY DISPATCH

**THE DISPATCH
EDITORIAL
BOARD**

Steve Staloch
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Editor, 847-7010

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Robert Dillon
Community at large

■ **Transportation Agency**

VTA Stuck in Spending Gear

It's time for the decade-old Valley Transportation Authority to learn to live within its means. And that means those leading it, its board of directors, its general manager, chief administrative officer and chief financial officer, need to take responsibility for the financial mess the agency is in.



How? By taking a realistic look at its \$340 million annual budget, the very few passengers - 135,000 riders each day - and its projected \$2.8 billion deficit for the next three decades. VTA leaders need to immediately draft a budget that makes sense. It will take real leadership, leadership that has been nonexistent.

The VTA needs to spend only what it has on real transit needs and not wants, like proposed expensive light-rail extensions around the county and the buffoonish \$4.7 billion BART-to-San Jose project.

The critical March independent audit by the Philadelphia-based HayGroup, at a cost of \$500,000, makes the same points. VTA General Manager Michael Burns took the proactive step to get the review. Now what? Will the VTA behave like a private sector company in trouble and cut costs and adopt a realistic budget?

Remember, some of the same concerns raised by the latest audit were pointed out in 2004, when the Santa Clara County's Civil Grand Jury recommended suspending the BART-to-San Jose project and disbanding the VTAs board of directors. The board thumbed their noses at all of the grand jury's recommendations.

Most damaging in the HayGroup audit are the findings related to how the agency has forecasted its 30-

year economic outlook, erroneously relying on money generated from the 2000 passage of a half-cent sales tax. The audit found that in light of last year's failed half-cent sales tax proposal and no other incoming revenues, the VTA cannot build and operate the promised transit improvements.

When the agency last year again asked voters for more money - a half-cent instead of a quarter-cent sales tax increase - it failed.

Now Burns has welcomed a transportation-only tax measure in the November 2008 ballot.

Yet even with rising gas prices, ridership is down.

So, while it's a good thing that the agency is questioning the logic behind its bus service, eliminating some routes and consolidating others, the truth is that what's needed is a magnitude 8.0 shake-up that would essentially re-invent the VTA. And despite all the super critical audits and obvious flaws, it's just not happening. Voters should remember that whenever VTA asks you for more money out of your paycheck.

■ **HOW TO REACH THE VTA**

■ Santa Clara County Supervisor Don Gage, 299-5010, don.gage@bos.co.santa-clara.ca.us

■ Morgan Hill City Councilman Greg Sellers, 779-7259, greg.sellers@morgan-hill.ca.gov

■ VTA General Manager Michael Burns, 321-5559 or michael.burns@vta.org.

Comment
Call th

CGS, 720?

A6 FRIDAY, JUNE 6, 2008

MORGAN HILL TIMES

LOCAL

VTA has disdain for taxpayers

Dear Editor,

It is refreshingly honest to see a VTA director admit that they have disdain for taxpayers. Their track record since VTA's insolvent inception reflects disdain at unprecedented levels, and unacceptable ones, too.

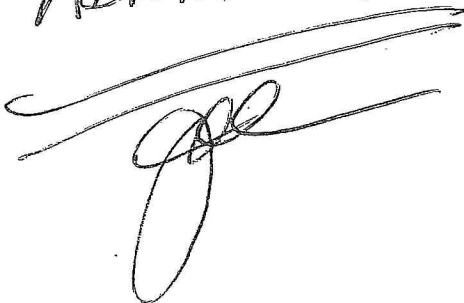
If VTA was a horse, then we would shoot it. Politician transport is the problem, not the solution. If we wanted socialist transport, then we would not have taken the capitalist route. Can VTA's directors, disdain and all, make VTA work? Could Lenin? Trotsky? Stalin? VTA only keeps going because of massive blood transfusions from taxpayers to VTA, increasing each year, but for how long? At what point do you pronounce the horse fatally ill? I much prefer openly admitted "disdain" to "base hypocrisy" as Lincoln so described VTA's usual policy toward the taxpayers. At least then we have some honesty from our elected officials, even if they are not elected to VTA, but rather, only appointed. As the Supreme Court of Virginia said in February, such a government is unconstitutional, and such a government's taxes, fees and bonds are "null and void." Same thing goes for VTA.

CAVEAT VIATOR.
JOE THOMPSON, GILROY

VTA =
COG

ALSO HAS
DISDAIN FOR
TAXPAYERS.

AT LEAST M.H.
COUNCILMAN
SELLERS
ADMITS IT.



KK - Did you READ LUS ANSWERS TO LUS
ONE LAST YE?

JOSEPH P. THOMPSON

Attorney at Law
8339 Church Street, Suite 112, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

September 21, 2007

FAX (831) 636-4160
Honorable George Diaz, Chairman
San Benito County Council of Government
481 Fourth Street
Hollister, CA 95023

Re: Public Records Act Request

Dear Mr. Diaz,

Please refer to California Government Code provisions known as the Public Records Act (hereinafter the "Act"), Government Code §§6250-6270, which Act applies to the SBCCOG, and especially to §6250, which states, "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

Regarding Agenda Item #11 entitled "FY 06/07 Budget" on yesterday's COG meeting agenda, I hereby make the following request for public records under the Act:

1. What money does COG use to compile in its budget report under the topic "revenue"?
2. What percentage of COG's "revenue" comes to COG thru the collection of fares?
3. What percentage of COG's "revenue" comes to COG thru taxpayers' subsidies, regardless of the name or label applied to them, e.g., "grants"?
4. What expenses of COG are used to compute "farebox recovery" in COG's reports?
5. What expenses of COG are not used to compute "farebox recovery" in COG's reports?
6. What expenses of COG are used to compute operating expenses of County Transit?
7. What expenses of COG are not used to compute operating expenses of County Transit?
8. What percentage of seats are transported empty each day by County Transit buses?
9. How many vehicle miles per year are County Transit's buses operated with no passengers on board?
10. How much money does County Transit require from tax subsidies to transport each passenger?
11. Do you have written authorization from COG's Directors authorizing COG's staff to select the operator for County Transit bus operations? If so, please provide me with a copy of it.

Very truly yours,

JOSEPH P. THOMPSON

cc: COG Board of Directors
cc: SBC Board of Supervisors

Public Records Request

So if they Don't know why do we
give them our Money?

1

ECONOMIC HARM ON LOCALS TO BE INFLICTED BY CAHSRA'S INSANE BULLET TRAIN-- PUBLIC COMMENT: NEXT MEETING:

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: bholtzclaw@newsyvmmedia.com; allcouncilmembers@ci.gilroy.ca.us; roland.velasco@ci.gilroy.ca.us;
askmike@garlic.com; fred.tovar@ci.gilroy.ca.us; peter.leroe-munoz@ci.gilroy.ca.us; cat.tucker@ci.gilroy.ca.us;
carol.marques@ci.gilroy.ca.us; dion.bracco@ci.gilroy.ca.us; marie.blankley@ci.gilroy.ca.us;
president@gilroyedc.org; ehoward1965@gmail.com; gary@custom-1.com; mgr42@charter.net;
rich.constantine@morganhill.ca.gov; sbcsuper@supervisor.co.san-benito.ca.us; info@sanbenitocog.org;
onemorejones@yahoo.com; sallybettencourt@gmail.com; rtdillon@garlic.com; donpatloe@att.net;
carl@reformcalifornia.org; jon@hjta.org

Date: Sunday, August 4, 2019, 08:22 AM PDT

Dear Barry,

Regarding the CAHSRA's insane plan and its insane planned Route in this Region, please publish UPRR's letter to CAHSRA informing them of the UPRR's superior property rights, and advising that the UPRR will not tolerate trespassers like CAHSRA. I previously sent your predecessor Mark Derry a copy of UPRR's letter.

So, if UPRR won't let CAHSRA trespass on its property, on, over, or under its property, then where do they plan to build their Frankenstein Monstrosity money-waster that will inflict great economic harm to local taxpayers, property owners, and small and very small business owners?

California voters voted for self-sufficient high speed rail, not another subsidy-dependent socialist supersized Amtrak or Caltrain. It is bad public policy to supplant free enterprise rail transport with USSR-style government owned rail transport. Gas tax increases to pay for the bad public policy decisions of our leaders is contrary to the best interests of the State and the Nation.

Capitalism is the preferred route for railroads as Lincoln concluded in 1864 when Granville Dodge, UPRR's top civil engineer, urged Lincoln to nationalize the UPRR. The lessons we've learned from Amtrak, Caltrain, and other taxpayer-dependent railroads ought to be recognized and admitted, rather than denied and ignored by our leaders.

I repeat what I've said previously, and attach one of my letters to CAHSRA recommending sound public policy for rail transport. Our leaders ought to follow Lincoln's advice. Rejecting Lincoln's policy is unsound and unsustainable in the long run for America.

We cannot afford the bankrupt-from-conception public sector transit boondoggles that are already funded by gas & diesel taxes on motorists by bad public sector transit fiascoes which are making California unlivable.

Joseph P. Thompson
(408) 848-5506
e-Mail: TransLaw@PacBell.Net
PS:

Here's a recent Article from the L.A. Times about UPRR's position with regard to the CAHSRA's Bullet-in-the-Brain Train:

[Contractors claim Union Pacific is delaying bullet train project](#)

Communication: Public Comment Supplement (PUBLIC COMMENT)



Contractors claim Union Pacific is delaying bullet train project

The most ambitious rail project of California's future is increasingly dependent on the cooperation of the very ...



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75.7kB

JOSEPH P. THOMPSON
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Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

January 5, 2010

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's second (judicially-required) EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letters to you dated 3/23/09 and 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see attached to my letter to you 3/23/09).

Summary. Lenin convinced his fellow countrymen that Marx & Engels were right, with Trotsky's help, and Stalin's "persuasion" tactics. Did that make his philosophy right? No. Just like Lenin, CAHSRA's proponents are wrong. You remind me of heroin addicts who refuse to admit their addiction. Revelations since the election show what a disastrous idea you have proposed for this sad State, dominated by radical socialists in our Legislature, the League of California Cities, and the California State Association of Counties, and the public transit agencies and their public-sector unions. I think that history will be just as kind to the CAHSRA's proponents as it's been to Lenin. The people of California will rue the day that the Trojan Horse was approved in the guise of the Bullet Train.

As I said before, "The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should

Communication: Public Comment Supplement (PUBLIC COMMENT)

government do, and what should it leave to others.”¹ The sound, sustainable answer to Secretary Mineta’s “crucial question” lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail’s owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

The north-south tonnage flows in California, on Hwy. I-5, US 101, and Hwy. 99, represent a source of funding that could, in a private-sector model, duplicate and exceed taxpayers’ subsidies in the public-sector model as proposed in the EIR. The French government has announced that it will have Fedex freight transported by that nation’s HSR starting next year, so those with experience in operating HSR in Europe have apparently resorted to freight revenue as a source of funding. We could reduce air pollution, traffic congestion, and road and bridge support deterioration and maintenance expenses if we diverted some of that tonnage onto HSR. I have said this to the HSRA since before its creation when it was a Commission.

I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

As the LAO’s Report states (page 5), the HSR service should “not require an operating subsidy.” A feasible “funding source . . . for future years . . .” (page 6, LAO’s Report) exists now and will exist into the future: freight revenue. As with freight moving in the bellies of airliners, HSR can transport freight, thereby decreasing air pollution because the fuel savings per ton/mile is about 75% compared with rubber tires hauling freight on concrete or asphalt. The profit made moving freight

¹Joseph P. Thompson, “ISTEA Reauthorization and the National Transportation Policy,” 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997).

can offset the losses sustained transporting passengers. Overnight shipments between Northern and Southern California can be transported without interfering with daytime, commute hours.

Comment: UP's Property Rights.

In addition to those aspects identified by Cox and Moore ("Reason Report"), the UP's Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its to own, for its shareholders' benefit. The Nation's national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP's tracks in the SF Peninsula, San Jose, and South Bay Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!"

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH MAZE & ASSOCIATES FOR AUDIT SERVICES FOR THREE FISCAL YEARS

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a consultant agreement with Maze & Associates for the not to exceed amount of \$111,853 for audit services for three fiscal years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The City entered into an agreement with Maze & Associates in 2015 for financial audit services. The current agreement is set to expire soon and require an amendment to extend the term or begin the process for a new request for proposal (RFP). Maze & Associates offered to extend the contract for an additional three years at the current price, in addition to a \$5,000 discount in the first year. Staff believes this is a good offer as a new RFP would not likely result in any savings and staff has had positive experience working with Maze & Associates in the last four fiscal years. Maze & Associates has a solid reputation as a CPA firm, specializing in municipal and non-profit audits. It has over 70 municipal clients similar to Morgan Hill. Rather than amending the existing agreement, the City Attorney's Office recommended a new contract be signed as the original contract was written five years ago and there have been changes to the City's standard consultant contract template.

Government code and Government Finance Officer's Association's (GFOA) best practices do not require municipal governments to engage the services of a different audit firm at the end of the audit contract as the high level of specialized expertise needed to perform a quality audit of a municipal government often limits competition, which means that a requirement to change audit firms at the end of the audit contract could have the unintended effect of forcing a government to engage the services of a less qualified audit firm. Instead, Government Code Section 12410.6(b) requires that the audit partner responsible for reviewing the audit to be rotated after no more than six consecutive fiscal years and GFOA best practices also recommend such rotation to provide fresh perspective. The current audit partner at Maze & Associates that oversees the Morgan Hill audit has been overseeing the City audit for the last two fiscal years.

Staff intends to request for a new overseeing audit partner once the current audit partner has reached the six years threshold.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed consultant agreement with Maze & Associates for audit services.

ALTERNATIVE ACTIONS:

City Council could direct staff to begin the process for a new RFP.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 6, 2015, the City Council approved an agreement for audit services with Maze & Associates.

On September 7, 2016, the City Council approved an amendment to the agreement to include an additional scope of work related to new Government Accounting Standards implementation.

FISCAL AND RESOURCE IMPACT:

There are sufficient funds in the adopted FY 2019-20 Finance's operating budget for the current year audit services. Subsequent years' audit services will be budgeted during the biennial budget development process.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Morgan Hill Consultant Agreement signed 07.18.19

CONSULTANT AGREEMENT MAZE & ASSOCIATES ACCOUNTING CORPORATION

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and MAZE & ASSOCIATES ACCOUNTING CORPORATION, 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 the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2023, 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 two years. 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 annual auditing and financial reporting services as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$111,853.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall depend on how many federal grants received in an audit year and number of major programs and shall be billed based on the rate and basis set forth in **Exhibit B**. The City Manager is authorized to increase the amount of the agreement for the additional audits; any such increase shall be in writing signed by both parties. Additionally, if the City Manager extends the term of this Agreement pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

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

7.1. **Insurance Types and Amounts.**

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

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

to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

7.1.5. Professional Liability.

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

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

insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

- 9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

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

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

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

reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

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

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

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

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Maze & Associates Accounting Corporation
3478 Buskirk Ave, Suite 215
Pleasant Hill, CA 94523

Address of CITY is as follows:

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

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

15. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

21.2. **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.

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

21.4. **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 (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **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.

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

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

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

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

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

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 Michelle Bigelow
 Print Name

Date: _____

APPROVED AS TO FORM:

 City Attorney

 Donald A. Larkin
 Print Name

Date: _____

 City Manager

 Christina J. Turner
 Print Name

Date: _____

MAZE & ASSOCIATES ACCOUNTING CORPORATION

By: _____

Chris Hunt
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 7/18/19

By: _____

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

Date: 7/18/19

Attachment: Morgan Hill Consultant Agreement signed 07.18.19 (2415 : Approve Consultant Agreement with Maze & Associates)

EXHIBIT A

SCOPE OF SERVICES

NATURE OF SERVICES REQUIRED

A. Scope of Work to be Performed

The City of Morgan Hill desires the auditor to express an opinion on the fair presentation of its general-purpose financial statements in conformity with generally accepted accounting principles.

The auditor is not required to audit the combining and individual fund, account group financial statements and supporting schedule. However, the auditor is to provide an "in-relation-to" report on the combining and individual fund financial statements and supporting schedules based on the auditing procedures applied during the audit of the basic financial statements. The auditor is not required to audit the statistical section of the report.

The auditor is not required to audit the schedule of federal financial assistance. However, the auditor is to provide an "in-relation-to" report on that schedule based on the auditing procedures applied during the audit of the basic financial statements.

B. Auditing Standards to be Followed

To meet requirements of this request for proposal, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. Government Accountability Office's **(GAO) Government Auditing Standards** (July 2011 Revision), the provisions of the Single Audit Act Amendments of 1996 and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

C. Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

1. A report on the fair presentation of the financial statements of the City and the Corporation Yard Commission (bi-annual for the latter, in odd- numbered years) in conformity with generally accepted accounting principles.
2. A Report on the City's compliance with the Gann appropriation limit.
3. A Single Audit report.
4. A report on the internal control structure based on the auditor's understanding of the control structure and assessment of control risk.
5. A report on compliance with applicable laws and regulations.
6. An "in-relation-to" report on the schedule of federal financial assistance.
7. A report on the internal control structure used in administering federal financial assistance programs.
8. A report on compliance with general and specific requirements related to major and non-major federal financial assistance programs.

In the required reports on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions that are also material weaknesses shall be identified as such in the report.

Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the reports on internal controls.

The reports on compliance shall include all instances of noncompliance.

Irregularities and illegal acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts of which they become aware to the following parties:

Richard Constantine, Mayor
David Clink, Treasurer
Christina J. Turner, City Manager
Dat Nguyen, Finance Director

D. Special Considerations

1. As required by Statement No. 14 of the Governmental Accounting Standards Board (GASB) the City's financial statements include its component units. These component units are the Corporation Yard Commission (discretely presented), the Morgan Hill Wastewater Financing Corporation (blended), and the Morgan Hill Financing Authority (blended).
2. The City of Morgan Hill will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in its financial reporting award program. The auditor selected will be expected to prepare the CAFR in relation to the award checklist to ensure compliance with the award program.
3. It is anticipated that the City of Morgan Hill will prepare one or more official statements in connection with the sale of debt securities, which will contain the general-purpose financial statements and the financial advisor and/or underwriter, to issue a "consent and citation expertise" as the auditor and any necessary "comfort letters."
4. The City of Morgan Hill has determined that the U. S. Department of Housing and Urban Development will function as the cognizant agency in accordance with the Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards (Uniform Guidance).
5. The schedules of federal financial assistance and related auditor's report, as well as the reports on compliance and internal controls, are not to be included in the comprehensive annual financial report but are to be issued separately.

E. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years unless the firm is notified in writing by the City of Morgan Hill of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designee:

- City of Morgan Hill
- U.S. Department of Housing and Urban Development
- U.S. Government Accountability Office
- Parties designated by the Federal or State governments or by the City of Morgan Hill as part of an audit quality review process
- Auditor's or entities of which the City of Morgan Hill is a subrecipient of grants
- State of California, Office of the State Controller

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

F. Preparation of the Comprehensive Annual Financial Report

The audit firm will prepare the Comprehensive Annual Financial Report, including notes, with copies and distribution done by the City. The City will prepare transmittal letter, MD &A and the statistical section. It is expected the report will be provided to the City in printable PDF format. Any supporting Word and Excel documents will also be provided for the City's records.

G. Completion/Submission of Report of Financial Transactions to the State Controller's Office.

The audit firm will complete the Report of Financial Transactions for the City based on the unaudited trial balance.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

SUMMARY SCHEDULE				
Schedule of Professional Fees and Expenses				
Service Provided	Total Price FY 2019 (Referenced Year)	Total Price FY 2020	Total Price FY 2021	Total Price FY 2022
Audit of City's Basic Financial Statements	\$29,753	\$29,753	\$29,753	\$29,753
Reports and Opinions	Included in above			
Preparation of CAFR	Included in above			
Preparation of State Report of Financial Transactions	3,264	3,264	3,264	3,264
Single Audit Act (If applicable. One major program)	3,236	3,236	3,236	3,236
GANN Appropriation Limit Report	698	698	698	698
TDA (if applicable)	2,000	2,000	2,000	2,000
One-time discount		(5,000)		
GRAND TOTAL OF ALL SERVICES	\$38,951	\$33,951	\$38,951	\$38,951

Additional single audits shall be performed at the request of the City at a cost of \$3,236 per audit.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

APPROVE UPDATES TO THE PUBLIC ART INVENTORY

RECOMMENDATION(S)

Approve updated Public Art Inventory.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

On March 5, 2019, the Library, Culture and Arts Commission proposed updates to the City Public Art Inventory. The update is now scheduled for Council review.

The Commission is tasked with reviewing and inspecting the City's public art annually. Commissioner Robert Benich performed the inventory and made several recommendations. Following review of the recommendations the full Commission has recommended an update to the Inventory. The Commission has made the following recommendations:

1. Remove historical items and other items not considered art from the Inventory but retain them on a separate list.
2. Remove items not available for the public to view.
3. Add the "Waiting for the Train" Clay Model to the Inventory.
4. Formally add the "Skate Park Art" to the Inventory.
5. Add descriptive plaques to several items.

The proposed changes were used to develop the updated Public Art Inventory found in Attachment 1. The items proposed to be removed from the Inventory are included in Attachment 2 and will be retained but will not be considered Public Art moving forward.

COMMUNITY ENGAGEMENT: Inform/Empower

The Commission was empowered to perform the inventory and make recommendations to the Council. This item serves to inform the community of the update to the Inventory. No changes to the items on either list would require physical removal of artwork.

ALTERNATIVE ACTIONS:

The City Council could choose to not update the Inventory and provide further direction to the Commission and staff.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has approved the acceptance of public art regularly. No recent Council actions relating to updating the Public Art Inventory holistically have occurred. The Library, Culture and Arts Commission recommended the update at its March 5, 2019 meeting.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this action. Supporting the Commission and management of the Public Art Inventory is a responsibility of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Attachment 1 - Proposed Public Art Inventory
2. Attachment 2 - Other Items

Table 1: Inventory of Public Art in Morgan Hill

Item No.	Title	Artist	Year Dedicated	Materials - Format	Maintenance	Date Inspected	Notes	Location	Location Detail
1	Morgan Hill's City Rock, Poppy Jasper	n/a	2001	Encased Rock Sample	Dusting of Case.	10/9/2018		Morgan Hill Community and Cultrual Center	Inside CCC
2	A View of El Toro in October	Dave Sellers		Framed Painting	Dusting.	10/9/2018		Morgan Hill Community and Cultrual Center	Inside CCC
3	Our Inspiration (Flower)	Helen M. Nauss	2006	Framed Painting	Dusting.	10/9/2018		Morgan Hill Community and Cultrual Center	Inside CCC
4	Clay Model of "Waiting For The Train	Marlene Amerian	2007	Clay model	Dusting of Case.	10/9/2018	New Item Added to Inventory	Morgan Hill Community and Cultrual Center	Inside CCC
5	Encompass	Blessing Hancock	2015	Powder Coated Metal	Cleaning/ repainting - as needed	10/16/2018		Morgan Hill Community and Cultrual Center	Monterey Road - entrance to Community Center
6	Framed 3-D Vase	Sister City Gift	2008	Matting, metal	Dusting.			Morgan Hill Civic Center	Inside City Council Chamber Bldg
7	2 Mexican Paintings	Unknown	NS	Oil Painting	Dusting.			Morgan Hill Civic Center	Inside City Council Chamber Bldg
8	Leadership Morgan Hill Photo Collage	Leadership MH 2014	2014	Large photo collage	Dusting: as needed	10/16/2018		Morgan Hill Civic Center	Inside City Council Chamber Bldg
9	Tara Romero Bronze Sculpture			Bronze Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.		Not yet installed	Morgan Hill Civic Center	Grounds outside Council Chambers entrance
10	Harmony Tree	Saori Ide & Jonathan Russell	2018	Metal Sculpture	Routine Stainless steel cleaning, lighting replacement.	10/16/2018		Morgan Hill Civic Center	Between City Hall & Council Chambers Bldg
13	Liberty	Evelyn Davis	2006	Bronze Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	11/5/2018	Cleaned bi-annually by volunteers from the Masonic Temple	Centennial Recreation Center & Community Park	Behind CRC on walking path
14	Skate Park Art	Tanya Golphin	2008	Metal Sculpture	Remove debris & graffiti as needed		New Item Added to Inventory	Centennial Recreation Center & Community Park	On fence at skate park
15	Loki Owl Sculpture	Evelyn Davis	2019	Bronze Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.			Centennial Recreation Center & Community Park	Adjacent to CRC Parking Lot on Trail
16	Waiting for the Train	Marlene Amerian	2007	Bronze Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	10/16/2018	Cleaned bi-annually by volunteers from the Masonic Temple	Downtown Morgan hill	Morgan Hill Train Station
17	Bicycle and Town View	Joan Harkness, Art Decker, Steve Harkness	2015	Mural	Inspection and Graffiti Abatement	1/16/2019		Downtown Morgan hill	"Pop-Up" park - corner of Monterey Rd. & 3rd St.
18	Family of Deer	Evelyn Davis	2015	Bronze Sculptures	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	10/16/2018		Downtown Morgan hill	Median on Monterey Road between 3rd & 4th Street
19	Tarantula	Gordon Huether	2015	Metal Construction	Clean as needed, replace lighting.	10/9/2018		Downtown Morgan hill	South side of Parking Structure on 4th Street
20	Poppy Jasper	Gordon Huether	2015	Plastic Wall	Bi-annual inspection & clean as needed (bi-monthly)	10/9/2018		Downtown Morgan hill	3rd St. entrance to Parking Structure
21	Railroad Park Mural	Pam Mossing	2017	Mural	Remove graffiti and wipe down as needed,	10/9/2018		Downtown Morgan hill	Railroad Park
22	Small Steps (Fox Sculpture)	Evelyn Davis	2017	Bronze Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	1/5/2019	Cleaned bi-annually by volunteers from the Masonic Temple. Bronze patina starting to turn green. Needs attention.	Downtown Morgan hill	Downtown Creek Park

Attachment: Attachment 1 - Proposed Public Art Inventory (2411 : Public Art Inventory Update)

Table 1: Inventory of Public Art in Morgan Hill

Item No.	Title	Artist	Year Dedicated	Materials - Format	Maintenance	Date Inspected	Notes	Location	Location Detail
23	Once Upon a Mushroom	Evelyn Davis	2007	Bronze Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	9/18/2018	Cleaned bi-annually by volunteers from the Masonic Temple	Morgan Hill Library	Front of library
24	Story Time	Purchased Leadership Morgan Hill Class Of 2007	2007	Bronze Plated Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	9/18/2018	Cleaned bi-annually by volunteers from the Masonic Temple	Morgan Hill Library	Front of library
25	Knowledge is Power	Purchased Leadership Morgan Hill Class Of 2007	2007	Bronze Plated Sculpture	Bronze Care: Monthly Inspections/Cleaning. Annual Waxing.	9/18/2018	Cleaned bi-annually by volunteers from the Masonic Temple	Morgan Hill Library	Front of library
26	Be Your Own Hero	Vanessa Davidson	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2018 Leadership MH Class Project Box 1	Downtown Morgan hill	Railroad Park
27	Courage Does Not Always Roar	Lina Velasquez	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2019 Leadership MH Class Project Box 2	Downtown Morgan hill	Monterey Rd. & Main St.
28	Inspire Change	Danielle DeRome	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2020 Leadership MH Class Project Box 3	Downtown Morgan hill	Monterey Rd. & Dunne Av
29	Inspire Others	Patty Cutis	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2021 Leadership MH Class Project Box 4	City Steets	Tennant Ave.& Vineyard Ave.
30	Kindness First - Words Matter	Teresa Anguiano	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2022 Leadership MH Class Project Box 5	City Steets	Dunne Ave.& Peppertree Ave.
31	Never Give Up	Teresa Anguiano	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2023 Leadership MH Class Project Box 6	City Steets	Dunne Ave. & Peppertree Ave.
32	Let Nature Sing	Jann Griffiths	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2024 Leadership MH Class Project Box 7	City Steets	Dunne Ave. & Hill Road
33	Love Everyone	Shawna Gonzales	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2025 Leadership MH Class Project Box 8	City Steets	Main St. & Calle Mazatar
34	Never Stop Learning	Pamela Mossing	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2026 Leadership MH Class Project Box 9	City Steets	Monterey Rd. & Tennant Ave.
35	Welcome Home	Lina Velasquez	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2027 Leadership MH Class Project Box 10	City Steets	Main St. & Butterfield Blvc
36	What You Think You Become	Noah Chin	LMH Class of 2018	Mural on Utility Box	Graffiti abatement		2028 Leadership MH Class Project Box 11	City Steets	Hale Ave & Llagas Road

Morgan Hill City Miscellaneous Items To Be Tracked

2.b

Item No.	Title	Artist	Date (Dedicated)	Materials - Format	Maintenance	Date Inspected	Notes	Detailed Location	Location
1	Sister Cities Cabinet	Various		Photos, baskets, wood, texts, metals	Dusting of Case.	10/9/2018	Remove from inventory	Morgan Hill Community and Cultrual Center	Inside CC
2	Morgan Hill All American Hometown	Thomas Kinkade	Unknown	Framed Print (#1)	Dusting.	10/16/2018	#1: In a private office (Eric Blomquist). Remove from inventory.	Morgan Hill Civic Center	City Hall offices. Not open to public.
3	Morgan Hill All American Hometown	Thomas Kinkade	Unknown	Framed Print (#2)	Dusting.	10/16/2018	Remove from inventory.	Morgan Hill Civic Center	City Hall
4	Morgan Hill All American Hometown	Thomas Kinkade	Unknown	Framed Print (#3)	Dusting.	Could not find	#3: Could not find. Remove from inventory.	Morgan Hill Civic Center	
5	Morgan Hill Centennial 1906-2006	Marie Christine Connolly	2006	Framed Painting	Dusting.		Transfer to Historical Society.	Villa Mira Monte	In Hiram Morgan Hill House
6	Light of Freedom	Thomas Kinkade	2001	Framed Painting	Dusting.	Could not find	Remove from inventory.	Morgan Hill Civic Center	
7	Photo of Scottish ruins	Unknown	NS	Photograph	Dusting.	Could not find	Remove from art inventory.	Morgan Hill Civic Center	
8	Mizuho Town, Skyhall in Autumn	NS	NS	Photograph	Dusting.	Could not find	Remove from inventory.	Morgan Hill Civic Center	
9	Morgan Hill House	NS	NS	Photograph	Dusting.	Could not find	Transfer to Historical Society.	Villa Mira Monte	In Hiram Morgan Hill House
10	The Pride of Santa Clara Valley	Jolly B Jones	1988	Framed Text	Dusting.	Could not find	This is literature. Remove from inventory.	Morgan Hill Civic Center	
11	MH Civic Center	NS	NS	3 Panel Photograph	Dusting.	Could not find	Remove from inventory.	Morgan Hill Civic Center	
12	City of Morgan Hill Plaque	NS	2006	Wood, metal	Dusting.	1/16/2019	Remove from inventory.	Morgan Hill Civic Center	Council Chambers
13	City of Morgan Hill Plaque	NS	1988	Wood, metal	Dusting.	1/16/2019	Remove from inventory.	Morgan Hill Civic Center	Council Chambers
14	From Nob Hill Looking East	NS	1915	Photograph	Dusting.	1/16/2019	In storage. Remove from inventory.	Morgan Hill Civic Center	
15	Looking East Across Main Street	NS	1949	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
16	Monterey Looking North from Third	NS	1958	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
17	From El Toro Looking North East	NS	1969	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
18	Monterey Looking South from Main	NS	1958	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
19	From El Toro Looking East at Dunne	NS	1969	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
2	City Hall, Monterey and Main	NS	1969	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
21	Looking West Across Monterey	NS	1949-1950	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	
22	From Nob Hill Looking North	NS	1915	Photograph	Dusting.	Could not find	In storage. Remove from inventory.	Morgan Hill Civic Center	

Attachment: Attachment 2 - Other Items (2411 : Public Art Inventory Update)

Morgan Hill City Miscellaneous Items To Be Tracked

2.b

23	Soils Steel Art	Helen Lessick	2015	Metal Signs	Community Garden volunteers to maintain.	10/16/2018	May have to be removed from inventory when garden is moved.	Downtown Morgan hill	Entrance to Community Garden
26	Chief John Moreno, 1950-1978	Not Specified	Unknown	Black and white photograph	Dusting of Case.	10/16/2018	Remove from inventory.	Morgan Hill Police Station	Entrance to Police Station
27	American Flag	Not Specified	2001	Framed cloth flag	Dusting of Case.	10/16/2018	Remove from inventory.	Morgan Hill Police Station	Police Station back office area
28	Light of Freedom	Thomas Kinkade	2001	Framed Print	Dusting.	10/16/2018	Remove from inventory.	Morgan Hill Police Station	Police Station back office area
29									
30									

Attachment: Attachment 2 - Other Items (2411 : Public Art Inventory Update)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

APPROVE AGREEMENT WITH CIVIC FOUNDRY LLC FOR INFORMATION TECHNOLOGY SERVICES

RECOMMENDATION(S)

1. Approve agreement with Civic Foundry LLC for Information Technology management for a not to exceed amount of \$180,000; and
2. Authorize the City Manager to execute and administer the agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture

2019 Strategic Priorities

Financial Stewardship
Telecommunications

REPORT NARRATIVE:

As part of the mid-cycle budget adjustments, the City Council approved the addition of an Information Technology Director classification. The Human Resources team conducted a recruitment process resulting in over 90 applications. The applications were screened by technology experts and eight finalists were interviewed. One finalist rose to the top but later withdrew from consideration for personal reasons, not leaving any viable candidates at this time.

Due to the length of the recruitment process and the need to move key projects forward, staff recommends waiting 10-12 months prior to conducting another recruitment and instead focus on the recommended redesign of the current Information Technology (IT) infrastructure and other key projects. During and prior to the transition, staff retained the consultant services of Civic Foundry LLC (CF) to conduct an IT security and infrastructure assessment. During this process CF recommended a more streamlined and consolidated resource management approach and the implementation of new security protocols that will protect the City's data from intrusion. Additionally, there are several other projects requiring immediate attention including relocation of IT division, security system (firewall) upgrades, and developing a city-wide internet monitoring policy.

Staff is recommending retaining CF for the next twelve months as they are most familiar with the City's current IT needs, have demonstrated a high-level of technical competence, and can immediately implement important security projects.

The full scope of work is outlined in exhibit A of the service agreement (Attachment 1).

COMMUNITY ENGAGEMENT: Inform

This staff report informs the community about the intended short-term actions for Information Technology leadership.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the contract and request staff to pursue a request for proposals for services or to conduct another recruitment for the IT Director, which could delay implementation of crucial projects that will enhance security protocols and minimize risks and vulnerabilities.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not Applicable.

FISCAL AND RESOURCE IMPACT:

CF services will be billed at \$15,000 per month from September 1, 2019 to August 31, 2020 for a total amount of \$180,000. This is in addition to \$15,000 per month for July and August 2019 from an earlier consultant agreement for IT management services, which was executed within the City Manager's signature authority. The IT budget has sufficient funds for this proposal from appropriated personnel expenses associated to the IT Director vacancy, within the Information Systems Fund (730).

CEQA (California Environmental Quality Act): Not a Project.

This Agreement falls under continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy, and procedure making and is therefore categorically exempt.

LINKS/ATTACHMENTS:

1. Civic Foundry Agreement

CONSULTANT AGREEMENT CIVIC FOUNDRY, LLC

THIS AGREEMENT is entered into and becomes effective on September 1, 2019 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and CIVIC FOUNDRY, LLC a California limited liability company ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until August 31, 2020 at which time CONSULTANT'S services shall be completed. This Agreement supersedes and replaces the Agreement entered into on August 16, 2019, which is hereby terminated. 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 provide executive-level management of day-to-day operations of the Information Technology Division as further described in **Exhibit A**.

4. **Compensation.** CONSULTANT shall be compensated as follows:

4.1. **Amount.** \$180,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed one hundred eighty thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.

4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

Attachment: Civic Foundry Agreement (2442 : Approve Information Technology Agreement)

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

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

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

7.1. **Insurance Types and Amounts.**

7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit 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.

7.1.2. **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) combined single limit 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.

7.1.3. **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.

7.1.6. Sexual Abuse/Molestation Liability (SML): 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) two hundred thousand dollars (\$200,000.00) 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 and pollution liability (when pollution liability applies).

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575

Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Civic Foundry
P.O. Box 5541
San Jose, CA 95150

Address of CITY is as follows:

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

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

15. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Maintenance of Records.**

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

16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors

related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

21. **Defense and Indemnification.**

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

21.2. **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.

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

21.4. **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 (21) and

any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. 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.

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

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

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

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

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

27. ☐ Data Sharing. This Agreement requires access by CONSULTANT to CITY's Geographic Information System (GIS) DATA for CONSULTANT to perform the work. CITY agrees to provide the GIS DATA to CONSULTANT solely for the purpose of performance of contracted work with the CITY upon the terms and conditions specified in Exhibit D, incorporated herein by this reference.

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CIVIC FOUNDRY, LLC

 City Attorney

By:

 Donald A. Larkin
 Print Name

 Vijay Sammeta, CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 8/27/2019

By:

 Print Name and Title of Signer.

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

Date: _____

Attachment: Civic Foundry Agreement (2442 : Approve Information Technology Agreement)

EXHIBIT A SCOPE OF SERVICES

This Statement of Work (SOW) is effective September 1, 2019 through August 31, 2020 and sets forth the scope of services for performing information technology (IT) consulting services by Civic Foundry, LLC for the benefit of the City of Morgan Hill, California (City).

In order to be more responsive to growing IT demands of employees and the public, and in efforts to become more strategic in its approach to procuring and utilizing modern trends in technology, the City added a new IT Director position (currently vacant) and is evaluating its current roadmap for technology.

The City has engaged the services of Civic Foundry, LLC to assist in securing and maintaining IT operations while the IT Director position is vacant, and to assist the City in setting its strategic direction for IT. Civic Foundry has performed previous IT consulting engagements for the City including a recent IT operational risk assessment, and has a unique understanding of the City's environment, staffing, IT issues and future technology needs.

Civic Foundry will assist the City in addressing immediate short-term objectives of maintaining IT operations and its longer-term goals of addressing recommendations from previous IT assessments and remediating identified risks and vulnerabilities to the greatest extent possible.

Below is a summary of services to be performed by Civic Foundry as covered by this SOW:

- Provide technology leadership to the City organization
- Provide day-to-day management of the IT Department, with IT staff continuing to report to City management
- Work with City staff to remediate identified areas that present the greatest current risks
- Finalize an infrastructure consolidation plan leveraging existing cloud licensing
- Reduce footprint and for resource intense on-premise servers
- Architect, plan, and implement a modern network design that results in the prudent expenditure of funds considering upcoming refreshes for firewalls and network equipment (based on budget availability)
- Track IT budget and expenditures
- Recommend IT investments during the City's budget cycle
- Continue to refine the disaster recovery strategy through additional sprints to test recovery of critical City systems
- Deliver a five-year strategic plan for technology as a final deliverable for this engagement

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

The scope of services in this agreement will be provided at a fixed monthly fee of \$15,000 per month, inclusive of all Civic Foundry staff and/or Bay Area travel. Payments are due and payable on the 30th day of each month.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Maria Angeles, Senior Civil Engineer

APPROVED BY: City Manager

APPROVE STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR THE SHOE PALACE PROJECT LOCATED AT 745 JARVIS DRIVE (PORTION OF ASSESSOR PARCEL NUMBERS 726-30-012 & 726-30-013)

RECOMMENDATION(S)

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Shoe Palace Project located at 745 Jarvis Drive (Portion of APNs: 726-30-012 & 726-30-013); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

The development located at the northeast corner of Jarvis Drive and Serene Drive is a new 503,400 square foot warehouse, office and distribution facility on a 23.35-acre adjusted parcel being a portion of APNs: 726-30-012 & 726-30-013 (Attachment 1). The project site is adjacent to the existing building currently occupied by the property owner, Bridge Group Investments, LLC, also known as Shoe Palace Corporation.

The project required the construction of on-site private stormwater treatment and retention facilities to improve the quality of stormwater runoff and reduce the runoff rate and volume within the site, as required by City Municipal Code Chapter 18.140, Post-Construction Stormwater Pollution Prevention, and the project's Administrative Site Review approval (SR2018-0013). The private stormwater facilities will require regular maintenance and inspection by the owner, Bridge Group Investments, LLC. To ensure proper maintenance and inspection, staff recommends that the City Council authorize the City Manager to sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement (Attachment 2) for the proposed Shoe Palace warehouse, office and distribution facility.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 17, 2018, the City Council approved an Impact Fee Freeze Agreement with Bridge Group Investments, LLC for the proposed Shoe Palace warehouse, office and distribution facility.

On March 6, 2019, the City Council approved a Sewer and Traffic Impact Fee Financing Agreement with Bridge Group Investments, LLC for the proposed Shoe Palace warehouse, office and distribution facility.

FISCAL AND RESOURCE IMPACT:

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

CEQA (California Environmental Quality Act):

Statutory Exemption.

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

LINKS/ATTACHMENTS:

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



Attachment: Site Map (2447 : Stormwater BMP O&M Agreement for Shoe Palace)



CITY OF MORGAN HILL

**Development Services Department
Land Development Engineering Division**

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

SITE MAP SHOE PALACE



0 100 200 400 600 800
Feet

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

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

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 2019, by **BRIDGE GROUP INVESTMENTS, LLC, a California Limited Liability Company**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

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

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcels of land more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.140 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **STORMWATER CONTROL PLAN FOR SHOE PALACE CORPORATION** prepared by **SIEGFRIED ENGINEERING, INC.** and dated **November 9, 2018**, which plans and any amendments thereto, are on file with CITY's Development Services Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

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

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibits "A" and "B" shall be subject to this AGREEMENT. It is intended and determined that the provisions of this AGREEMENT shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.
2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.

7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.
8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.

16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, its successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: GEORGE MERSHO

Title: CHIEF EXECUTIVE OFFICER (CEO)

CITY OF MORGAN HILL:

By: _____

Name: CHRISTINA J. TURNER

Title: CITY MANAGER, CITY OF MORGAN HILL

APPROVED AS TO FORM:

By: _____

Name: DONALD A. LARKIN

Title: CITY ATTORNEY, CITY OF MORGAN HILL

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

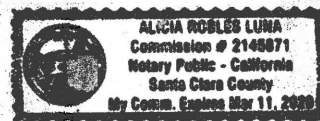
State of **California**
County of **Santa Clara**

On August 2nd 2019, before me, Alicia Luna a Notary Public in and for said County and State, personally appeared George Mersno proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"**LEGAL DESCRIPTION**

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING ALL OF PARCEL 5 AND A PORTION OF PARCEL 6 AS SHOWN ON THAT PARCEL MAP ENTITLED "MORGAN HILL BUSINESS PARK PHASE 1" FILED DECEMBER 5, 1983 IN BOOK 522 OF MAPS, AT PAGE 3 AND 4, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF ABOVE SAID PARCEL 6; THENCE NORTH 45°23'54" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL 6, A DISTANCE OF 484.06 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION; THENCE NORTH 44°25'34" WEST, A DISTANCE OF 60.76 FEET; THENCE NORTH 45°34'26" EAST, A DISTANCE OF 63.95 FEET; THENCE NORTH 37°52'51" WEST, A DISTANCE OF 157.01 FEET; THENCE NORTH 52°07'09" EAST, A DISTANCE OF 56.99 FEET; THENCE NORTH 37°52'51" WEST, A DISTANCE OF 307.40 FEET; THENCE NORTH 70°13'42" WEST, A DISTANCE OF 106.52 FEET; THENCE SOUTH 59°56'15" WEST, A DISTANCE OF 144.34 FEET; THENCE NORTH 37°52'52" WEST, A DISTANCE OF 322.12 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 50.00 FEET, TO WHICH A RADIAL LINE BEARS N52°07'08"E; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 76°59'30", A DISTANCE OF 67.19 FEET WITH A RADIAL BEARING OF NORTH 24°52'21" WEST; THENCE SOUTH 65°15'41" WEST, A DISTANCE OF 152.15 FEET; THENCE SOUTH 89°42'20" WEST, A DISTANCE OF 81.66 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF JARVIS DRIVE AS SHOWN ON ABOVE SAID PARCEL MAP, SAID RIGHT-OF-WAY LINE BEING A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 2,075.00 FEET; AND TO WHICH POINT A RADIAL LINE BEARS NORTH 89°42'20" EAST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19°32'37", A DISTANCE 707.78 FEET TO THE MOST WESTERLY CORNER OF ABOVE SAID PARCEL 5; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 5 THE FOLLOWING 3 COURSES: 1) NORTH 70°59'34" EAST, 56.89 FEET; 2) NORTH 58°34'30" EAST, 377.65 FEET; 3) NORTH 50°58'23" EAST, 136.16 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 5; THENCE SOUTH 39°01'37" EAST ALONG THE NORTHEASTERLY LINE OF PARCEL 5, A DISTANCE OF 286.54 FEET; THENCE SOUTH 37°52'51" EAST ALONG THE NORTHEASTERLY LINES OF ABOVE SAID PARCELS 5 AND 6, A DISTANCE OF 1,300.01 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL 6; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 6 THE FOLLOWING 4 COURSES: 1) SOUTH 45°34'26" WEST, 332.22 FEET; 2) SOUTH 44°25'34" EAST, 10.30 FEET 3) SOUTH 45°34'26" WEST, 84.28 FEET AND 4) SOUTH 45°23'54" WEST, 150.02 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 23.35 ACRES, MORE OR LESS.

SUBJECT TO ALL RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

EXHIBIT "B"**LEGAL DESCRIPTION**

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 6 AS SHOWN ON THAT PARCEL MAP ENTITLED "MORGAN HILL BUSINESS PARK PHASE 1" FILED DECEMBER 5, 1983 IN BOOK 522 OF MAPS AT PAGE 3 AND 4, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF ABOVE SAID PARCEL 6; THENCE NORTH 45°23'54" EAST ALONG THE SOUTHERLY LINE OF SAID PARCEL 6, A DISTANCE OF 484.06 FEET; THENCE NORTH 44°25'34" WEST, A DISTANCE OF 60.76 FEET; THENCE NORTH 45°34'26" EAST, A DISTANCE OF 63.95 FEET; THENCE NORTH 37°52'51" WEST, A DISTANCE OF 157.01 FEET; THENCE NORTH 52°07'09" EAST, A DISTANCE OF 56.99 FEET; THENCE NORTH 37°52'51" WEST, A DISTANCE OF 307.40 FEET; THENCE NORTH 70°13'42" WEST, A DISTANCE OF 106.52 FEET; THENCE SOUTH 59°56'15" WEST, A DISTANCE OF 144.34 FEET; THENCE NORTH 37°52'52" WEST, A DISTANCE OF 322.12 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 50.00 FEET, TO WHICH A RADIAL LINE BEARS N52°07'08"E; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 76°59'30", A DISTANCE OF 67.19 FEET; THENCE SOUTH 65°15'41" WEST, A DISTANCE OF 152.15 FEET; THENCE SOUTH 89°42'20" WEST, A DISTANCE OF 81.66 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF JARVIS DRIVE AS SHOWN ON ABOVE SAID PARCEL MAP, SAID RIGHT-OF-WAY LINE BEING A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 2,075.00 FEET; AND TO WHICH POINT A RADIAL LINE BEARS NORTH 89°42'20" EAST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°04'33", A DISTANCE OF 582.20 FEET TO THE POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 30.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°35'19" A DISTANCE OF 44.81 FEET; THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY OF SERENE DRIVE AS SHOWN ON ABOVE SAID MAP SOUTH 69°48'25" EAST, A DISTANCE OF 169.46 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS 1,290.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°12'36", A DISTANCE OF 567.60 FEET; THENCE SOUTH 44°35'49" EAST, A DISTANCE OF 32.80 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 14.71 ACRES, MORE OR LESS.

SUBJECT TO ALL RIGHTS-OF-WAY AND EASEMENTS OF RECORD.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - ALTIMIRA - TRACT NO. 10411

RECOMMENDATION(S)

1. Accept the Subdivision Public Improvements for Altimira – Tract No. 10411;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Altimira - Tract 10411 is a 7-lot subdivision located on the south east side of Mission Avenida and Altimira Circle just north of Peet Road (Attachment No. 1 - site map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and Alicante 2016 Inc., a California Corporation, dated October 25, 2017, and as specifically set forth in the plans and specifications approved by the City.

To date, the City has accepted a total of 128.48 miles of publicly maintained streets.

There are no new streets to be accepted as part of the development.

The value of the public improvements being accepted is \$99,638.

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS: Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the Final Map, and Subdivision Improvements Agreement for Altimira - Tract No. 10411, on September 27, 2017.

FISCAL AND RESOURCE IMPACT:

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

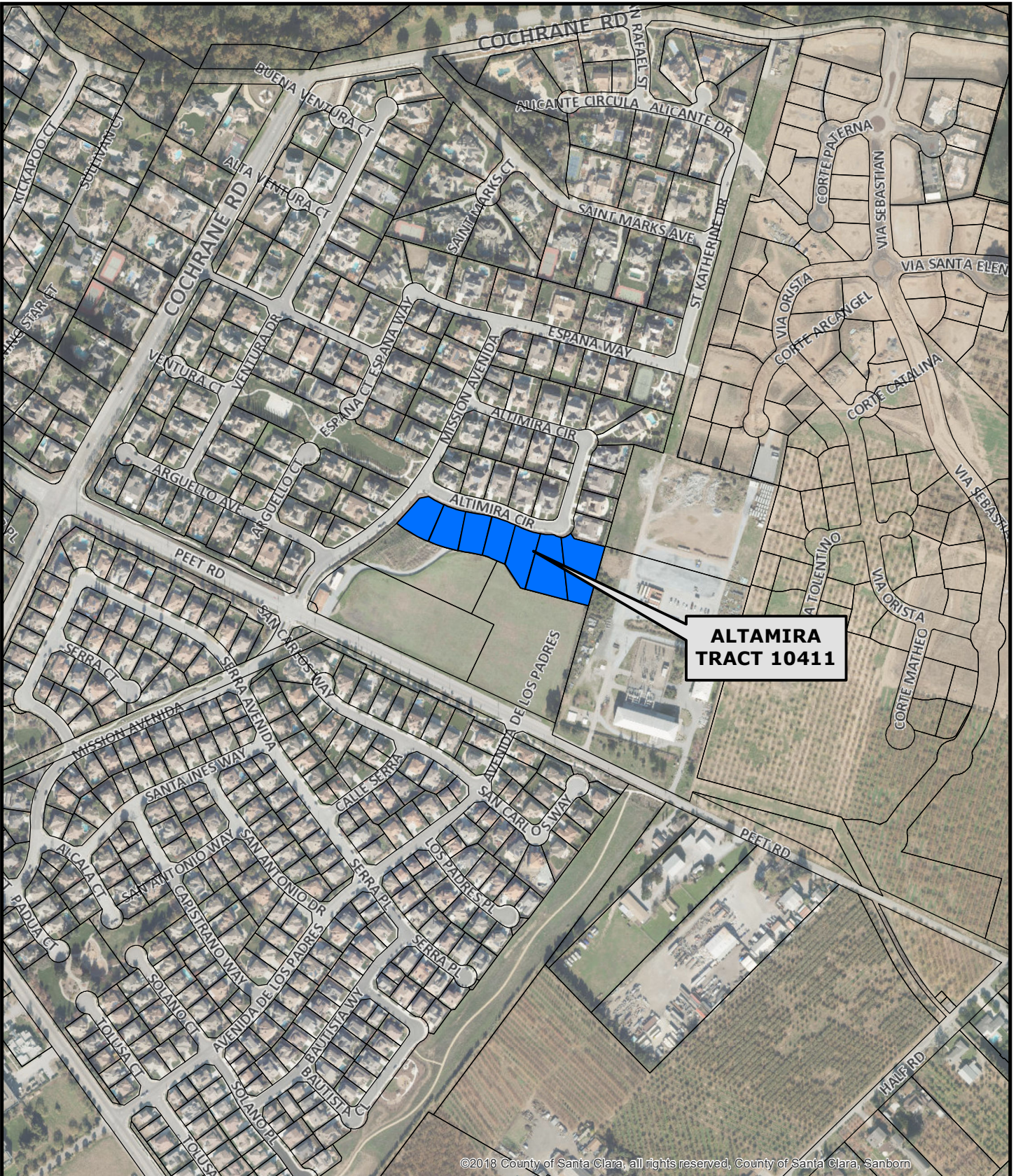
CEQA (California Environmental Quality Act):

Categorical Exemption.

Section 15332 of the State CEQA Guidelines – Infill Development Projects.

LINKS/ATTACHMENTS:

1. Site Map Altimira - Tract 10411
2. Notice of Completion



**Development Services Department
Land Development Engineering Division**

G:\R-14\Proj\GIS\John\Mario_Altamira_10411.mxd

SITE MAP ALTAMIRA TRACT 10411



Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

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

- 1) On **October 25, 2017**, the City of Morgan Hill, a Municipal Corporation, entered into a contract with **Alicante 2016 Inc., A California Corporation** for the **Altimira – Tract No. 10411** subdivision project located on the northeast corner of Peet Road and Mission Avenida Morgan Hill, California.
- 2) The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037
- 3) The contractor is **Alicante 2016 Inc., A California Corporation**.
- 4) The surety is **The Ohio Casualty Insurance Company**.
- 5) The project was completed on **August 8, 2019** and accepted by the City Council of the City of Morgan Hill on **September 4, 2019**.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

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

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

AWARD MORGAN HILL LIBRARY ADDITION PROJECT TO SELDEN & SON

RECOMMENDATION(S)

1. Approve the Morgan Hill Library Addition Project plans and specifications;
2. Award contract to Selden & Son for the Morgan Hill Library Addition Project in the amount of \$1,985,800;
3. Authorize expenditure of construction contingency funds not to exceed \$198,580; and
4. Authorize the City Manager to execute and administer the construction contract with Selden & Son pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The Morgan Hill Public Library was completed in August 2007. In 2014, the Friends of the Library commissioned a space needs study to evaluate the current floor plan and a future expansion plan to meet both the current and future needs of the Library. The findings from the space needs study produced an initial conceptual design for the Library Expansion Project.

In August 2016, the City Council awarded a consultant design services agreement with Weston Miles Architect (WMA) to further develop the conceptual design, and to provide design and construction plans for the Library Expansion Project. WMA met on several occasions with Santa Clara County Library representatives and other Library stakeholders as well as City staff to finalize the conceptual design for the project.

On April 4, 2017, City staff and WMA shared the finalized conceptual design for the Library Expansion Project with the Library and Cultural Arts Commission (LCAC). The

recommendations from LCAC along with the finalized conceptual design were submitted to City Council for approval on April 5, 2017.

The initial Library Expansion Project was bid in July 2018. However, the bid results exceeded the project budget and the bids were subsequently rejected by the City Council on August 22, 2018. WMA, Santa Clara County Library representatives, and other library stakeholders along with City staff collaborated to reduce the scope of work for the project. An updated conceptual design with a smaller footprint was then reviewed and approved by the Library and Cultural Arts Commission and the City Council in October 2018.

The project plans and specifications were completed in May 2019 and the project was advertised for bidding in June 2019. The scope of work includes a 2,500 square foot expansion, which includes 1,650 square feet of Program Room and 850 square feet of Children's activity area. The bid opening for this project was held on August 8, 2019 and the bids were received as listed below:

Selden & Son	\$1,985,800
Agbayani Construction Corporation	\$2,670,000

Selden & Son is the apparent low bidder for this project and their bid is approximately 21% less than the engineer's estimate of \$2,525,000. Selden & Son has many years of building construction experience and staff recommends the award of the contract in the amount of \$1,985,800. This project includes a 10% contingency of \$198,580. The project is currently scheduled to begin in October 2019 and be completed by July 2020, assuming no project delays.

The project plans and specifications are accessible on the City's [webpage within the Community Projects link](#).

COMMUNITY ENGAGEMENT: Involve and Inform

WMA and staff met regularly with Library staff as project plans were developed. The original master plan concept was developed with significant involvement from the Friends of the Morgan Hill Library. Prior to and during construction, staff is committed to provide weekly updates through City social media accounts and on City's website.

ALTERNATIVE ACTIONS:

While not recommended, City Council may elect to reject all bids and direct staff to rebid the project. The current recommendation by staff will provide an additional space and value to the Library.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

August 24, 2016 – The City Council approved a Service Agreement for Design Professionals with WMA for Design and Construction Support Services for the Library Expansion Project.

April 4, 2017 – Library and Cultural Arts Commission reviewed conceptual design and forwarded recommendations to City Council

April 5, 2017 – The City Council approved the conceptual design for the Library Expansion Project

June 7, 2017 – The City Council approved the First Amendment to WMA for the Library Expansion Project

November 15, 2017 – The City Council approved the adoption of a resolution approving the Design Permit for the Library Expansion Project

August 22, 2018 – Rejection of bids for the Library Expansion Project

September 4, 2018 – Library and Cultural Arts Commission reviewed updated conceptual design and forwarded recommendations to City Council

September 26, 2018 – The City Council approved the Third Amendment to WMA for the Library Expansion Project

October 17, 2018 – The City Council approved the Updated Conceptual Design for the Library Expansion Project

FISCAL AND RESOURCE IMPACT:

The total authorization for this project would be \$2,184,380, which includes a 10% contingency of \$198,580. The project is sufficiently funded in the adopted Capital Improvement Program budget, under Project #251015 – Library Expansion, funded by the Library Impact Fund (348).

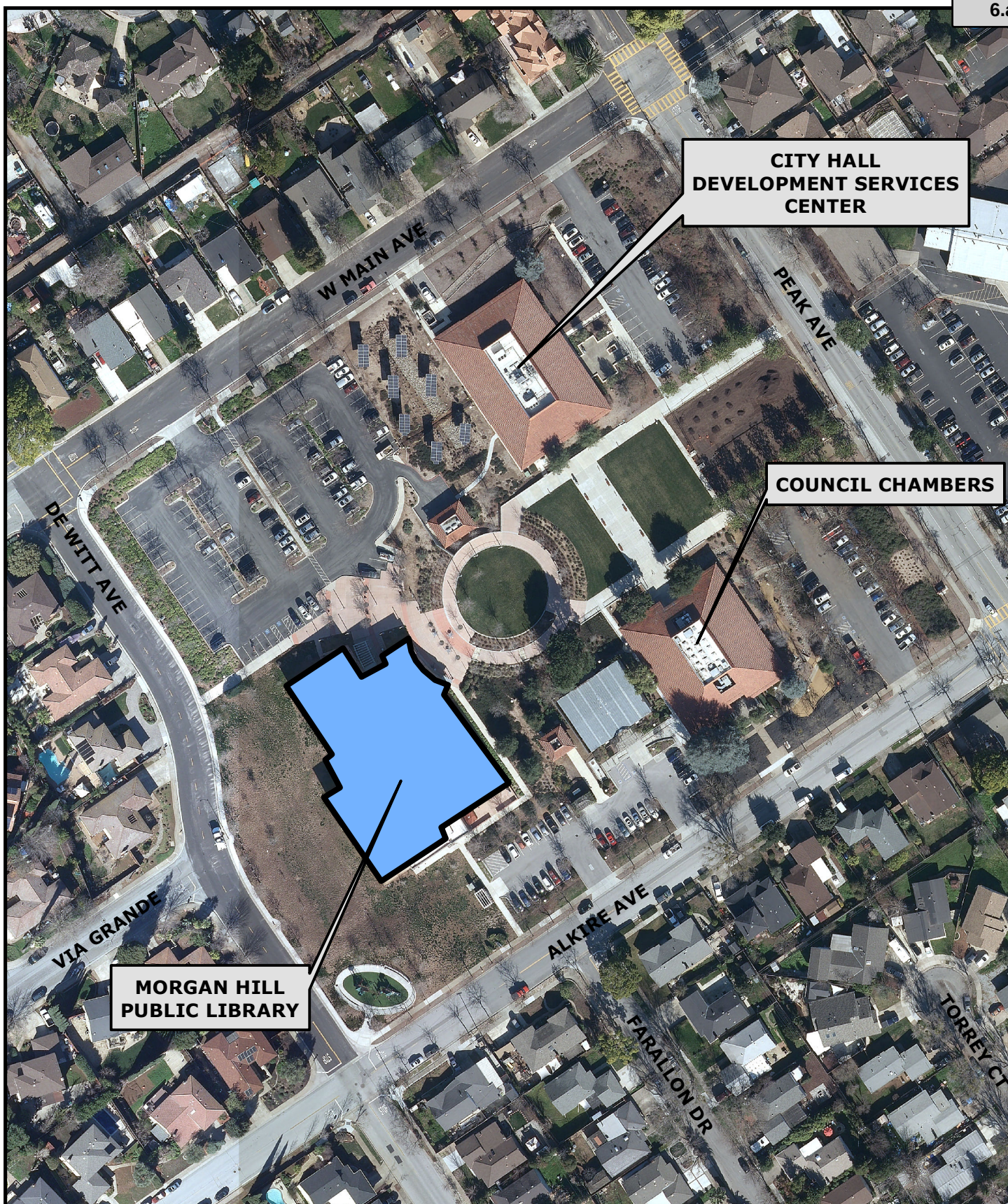
CEQA (California Environmental Quality Act):

Categorical Exemption

The Morgan Hill Library Addition Project is exempt from the California Environmental Quality Act (CEQA) under Section 15301 (Existing Facilities) (E) (1) of Guidelines for CEQA and Section 21083 of the Public Resources Code.

LINKS/ATTACHMENTS:

1. Vicinity Map 9-4-19

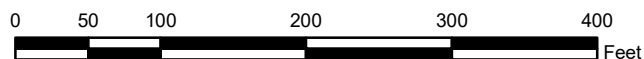


Attachment: Vicinity Map 9-4-19 (2427 : Award of Morgan Hill Library Addition Project)



CITY OF MORGAN HILL
Engineering and Utilities Department
CIP Engineering Division

MORGAN HILL LIBRARY ADDITION PROJECT





CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

AWARD CENTENNIAL RECREATION CENTER POOL DECK RESURFACING PROJECT TO FLEXGROUND SURFACES, INC.

RECOMMENDATION(S)

1. Award contract to Flexground Surfaces, Inc. in the amount of \$56,224; and authorize the expenditure of contingency funds not to exceed \$20,000; and
2. Authorize the City Manager to execute and administer that certain construction contract with Flexground Surfaces, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

GUIDING DOCUMENTS

Bikeways

Trails

Parks and Recreation Masterplan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Flexground Surfaces, Inc. in the amount of \$56,224 to complete the resurfacing of the Centennial Recreation Center (CRC) pool deck. The scope of work for the CRC Pool Deck Resurfacing project ("Project") includes all the labor and material necessary to resurface the entire 5,500 square feet of pool deck. The resurfacing is expected to extend the life of the pool deck for at least ten years, at which time the pool deck will have to be resurfaced again or replaced. Most importantly, the resurfacing is expected to substantially reduce the slipperiness of the deck to enhance public safety.

In soliciting bids for this contract, the City advertised in the Morgan Hill Times, posted on the City website and two online plan services; Public Purchase and the Online Plan Service, whose subscribers include multiple Northern California Builders' Exchanges. A bid solicitation was issued on July 15, 2019 and two bids were received on August 12, 2019:

Bidder's Name	Bid Amount
Flexground Surfaces, Inc.	\$56,224
Detail Construction and Waterproofing,	

Inc.	\$109,410
------	-----------

Flexground Surfaces, Inc. was the low bidder. The company's principals have a combined 76 years of in-depth industry knowledge and oversight of over 2 million square feet of aquatic and playground safety surfacing around the nation. In May 2019, Flexground also successfully completed the resurfacing of portions of the Aquatics Center pool deck. City staff is recommending that the Council award the contract to Flexground Surfaces, Inc. and authorize the City Manager to execute and administer the agreement (Attachment 1).

COMMUNITY ENGAGEMENT: Inform

The pool deck resurfacing is scheduled to take place from Monday, October 7, 2019 through Friday, October 18, 2019. Several weeks before the pool deck resurfacing begins, signs will be posted at the Centennial Recreation Center informing customers of the upcoming project and pool closure. Welcome Desk staff will be kept fully informed of the construction schedule so that they can keep CRC customers up to date on the progress of the project. Information on the closure will also be shared directly with members via social media and email communications.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project and direct staff to pursue an alternative approach to resurfacing the pool deck. Postponing this work is not recommended for the safety component associated with this work.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$76,224, which includes the contract amount of \$56,224 and a \$20,000 contingency. The contingency will support completing the project within the two-week planned pool closure window in order to best support customer service.

This project is in the approved FY 2019-20 Building Replacement Fund (741) projects, with a budgeted amount of \$65,000. Staff anticipates cost savings from other building replacement projects during FY 2019-20 that will be utilized to fund the difference between the budgeted amount and the final total cost.

CEQA (California Environmental Quality Act):

Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. Flexground Surfaces Inc_CRC Pool Deck Resurfacing Contract Signed

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Flexground Surfaces, Inc. ("Contractor") for work on the CRC Pool Deck Resurfacing Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on September 4, 2019, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following:

"No Other Documents"

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

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Fifty-Six Thousand Two Hundred Twenty-Three Dollars and Eighty-Three Cents (\$56,223.83) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project from the commencement date to be given in the Notice to Proceed ("Contract Time") through Friday, October 18, 2019. By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply

with such provisions before commencing the performance of the Work on this Contract.”

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

City:

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

Contractor:

Name: Flexground Surfaces, Inc.
Address: 2029 Opportunity Drive #3
City/State/Zip: Roseville, CA 95678
Phone: (916) 474-5431
Attn: Sandi Walsh, General Manager
Email: swalsh@flexground.com
Copy to:

10. General Provisions.

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

- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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

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

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

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____



CONTRACTOR:

FLEXGROUND SURFACES, INC.

 Signature

Corbin Hague, Member

Name/Title [print]

Date: 8/21/19

Corporate entities must provide a second signature:

 Signature

 Bill Stafford, President
 Name/Title [print]

Date: 8/21/19

1003439
 Contractor's License Number(s)

5/31/2021
 Expiration Date(s)

Seal:

1000021294
 Contractor's DIR Registration Number(s)

06/30/2020
 Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the CRC Pool Deck Resurfacing Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

SURETY:

CONTRACTOR:

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
 Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the CRC Pool Deck Resurfacing Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than _____ Dollars (\$_____) (the "Bond Sum"). By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void upon recordation of the notice of completion, provided Contractor has timely provided a warranty bond as required under the Contract. Otherwise Surety's obligations will remain in full force and effect until expiration of the one (1) year warranty period under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.
3. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
4. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 4.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

4.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or

4.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

- 5. Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 6. Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

- 7. Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
- 8. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and _____ ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the CRC Pool Deck Resurfacing Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of _____ Dollars (\$_____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

 Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa

Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

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Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

Claim means a separate demand by Contractor for change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items, any required

commissioning, and has provided all required submittals, including the warranty bond, instructions and manuals, and as-built drawings to City's satisfaction.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context requires otherwise.

Inspector means the individual(s) or firm(s) retained by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegate(s) when Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

RFI means a written request from Contractor for information from City or Design Professional.

Section as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into this Project by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

Technical Specifications means Specifications.

Work means all of the construction and services necessary or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City.

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including phone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension

of the Work, at Contractor's sole expense and with no extension of Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

- (2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to the fifty percent (50%) limitation set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, provided that City accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current approved schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** RFIs will be considered excessive or unnecessary if the Engineer determines that the explanation or response to the RFI is clearly and unambiguously discernable in the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the “General Provisions” of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

- (1) Any reference to the “Engineer” is deemed to mean the City Engineer.
- (2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions.
- (3) Any reference to the “Department” or “State” is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided “For Reference Only.”

Article 4

Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from

City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.
- 4.3 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to

Contractor, at any time as deemed necessary to protect the interests of City.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance (“CGL”).**
Contractor shall maintain CGL and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
 - a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
 - b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.
- (2) **Builder’s Risk Insurance:** The Builder’s Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers’ Compensation Insurance and Employer’s Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured,

Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) combined single limit, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (5) **Pollution (Environmental) Liability:** If the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- (6) **Professional Liability:**
 - a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor

maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.

- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
 - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
- (3) General Liability:
 - a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages

afforded will apply as though separate policies have been issued to each insured.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **Certificates.** Contractor must furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Contractor's Contract with City may be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

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

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

- (B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.
- 5.2 Schedule Requirements.** All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.
- (A) **As-Planned (Baseline) Schedule.** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.
- (B) **Progress Schedules.** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.
- (C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.
- (D) **Effect of Approval.** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule

unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or
- (5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) ***Request for Extension of Contract Time.*** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

(1) ***Required Contents.*** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) ***Delay Days and Costs.*** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must

specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts, including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6 Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work

as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and

- (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

- 6.4 Unilateral Change Order.** If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.
- 6.5 Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7 General Construction Provisions

7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities.

Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any

damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an “equal” item must be submitted with the written request for substitution. Contractor’s failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is “equal,” and City’s determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor’s Obligations.** City’s review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers’ application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written

notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes

responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) ***Duty to Notify.*** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;
- (2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or
- (3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

- 7.15 Trenching of Five Feet or More.** As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.
- 7.16 New Utility Connections.** City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.
- 7.17 Lines and Grades.** Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.
- 7.18 Historic or Archeological Items.**
- (A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized

footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned

value consistent with any itemized or unit pricing submitted with Contractor's bid.

- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

- 8.3 Adjustment of Payment Application.** City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

- (D) Failure to timely correct rejected, nonconforming, or defective Work;
- (E) Unexcused delay in performance of the Work;
- (F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor's payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing

- body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).
- 8.6 Setoff.** City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.
- 8.7 Payment to Subcontractors and Suppliers.** Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.
- (A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.
- (B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.
- 8.8 Final Payment.** Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

- 8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: _____

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | |
|--|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ |
| 3. REVISED CONTRACT AMOUNT: | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ |
| 5. REMAINING BALANCE: | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ |
| 8. CURRENT BALANCE DUE: | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | (5-8) \$ _____ |

Article 9 Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.
- (B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.
- (C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.
- (D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.
- 9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.
- (A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

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

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

9.6 Wage Theft Prevention. Compliance with Wage and Hour Laws: Contractor, 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 Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR 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 Contractor or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor 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. Contractor 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 Contractor 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 Contractor 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 Contractor 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.

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility

for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design

Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent

to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with

Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a "Claim" submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a "Claim" submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:

- (a) The background of the issue, including references to relevant provisions of the Contract Documents;
- (b) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
- (c) A chronology of relevant events;
- (d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
- (e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

- (1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.
- (2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.
- (3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45) day period is extended by mutual agreement of City and Contractor. However, the City may first request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) **Government Code Claims.**

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Damages.** Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.
- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.
- (A) **Failure to Comply.** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work

will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

13.3 Termination for Default. Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials,

supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

(A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;

(B) **Demobilization.** Actual and substantiated demobilization costs; and

(C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it

may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. Emergency Contact. Prior to the commencement of Work on the Project, Contractor must provide contact information to the Engineer for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding to the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

2. Authorized Work Days and Hours.

(A) Authorized Work Days. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days:

Monday, October 7, 2019 to Friday, October 18, 2019

(B) Authorized Work Hours. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:

Monday through Friday:	4:30 a.m. to 10:00 p.m.
Saturday and Sunday:	6:30 a.m. to 8:00 p.m.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

ADOPT RESTATED INTERNAL REVENUE SERVICES (IRS) SECTION 125 FLEXIBLE BENEFITS PLAN DOCUMENT FOR THE CITY OF MORGAN HILL

RECOMMENDATION(S)

1. Adopt resolution approving the City of Morgan Hill's Section 125 flexible benefits plan; and
2. Authorize the City Manager, or designee, to serve as the Plan Administrator.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

Section 125 of the Internal Revenue Code (Code) authorizes employers to offer employees benefits on a pre-tax basis. An employer's benefit plan that offers benefits on a pre-tax basis is referred to as a "Section 125 Plan" or a "Cafeteria Plan" (due to the fact that employees can select from among different benefit options, including some pre-tax). Employers use these plans to provide their employees with a choice between taxable cash and certain qualified benefits without adverse tax consequences. Paying for benefits on a pre-tax basis reduces the employees' taxable income and therefore reduces the employees' tax liability. In order to receive these tax advantages, the plan must comply with the rules and regulations of the Internal Revenue Services and the Code, one of which requires a Section 125 Plan to have a written document outlining the qualified benefits. The City of Morgan Hill has offered its employees pre-tax benefits, including health benefits, for some time and engaged Liebert Cassidy Whitmore, an experienced employment law firm, to draft its Section 125 Plan document that describes all benefits and establishes rules for eligibility and elections. The City must adopt the Section 125 Plan document, which requires Council approval, in order to ensure we continue to maintain the pre-tax benefits for IRS purposes.

Employees participating in a Section 125 Plan must be permitted to choose among at least one taxable benefit and one qualified benefit. Examples of qualified benefits include health benefits (medical, dental and vision), dependent care assistance; and group term life insurance coverage. In addition, once an employee makes a Section 125 plan election, he or she may not change that election until the next plan year, unless the employee experiences a permitted election change event. The next "Plan Year" is effective January 1, 2020, for the calendar year 2020, for which the open

enrollment/election period is September 9, 2019 through October 4, 2019.

During the last round of labor negotiations with the City's three bargaining groups (AFSCME, CSOA, and POA), it was agreed that the City would implement a cafeteria plan in or before October 2019. Staff has shared the Section 125 Plan with the City's three bargaining groups and they have all consented to the adoption of the Plan. Staff recommends the City Council approve and adopt the attached Section 125 Plan, and authorize the City Manager, or designee, to execute and administer the Plan and related documents.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community about the City's Section 125 Plan and benefits offered to its employees.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not Applicable.

FISCAL AND RESOURCE IMPACT:

The adoption of the proposed resolution and the Plan document does not have an impact on the adopted budget but will ensure the City's continued compliance with Section 125 of the Internal Revenue Code.

CEQA (California Environmental Quality Act):

Not a Project, as this is considered an organizational or administrative activity of a government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Resolution
2. City of Morgan Hill Section 125 Plan

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE RESTATEMENT OF THE CITY OF MORGAN HILL SECTION 125 FLEXIBLE BENEFITS PLAN (ALSO KNOWN AS THE CAFETERIA PLAN)

WHEREAS, A Section 125 Flexible Benefit Plan is a mechanism through which an employer can offer its employees with certain pre-tax benefits; and

WHEREAS, the City of Morgan Hill offers its employees pre-tax benefits and desires to restate the City of Morgan Hill Section 125 Flexible Benefits Plan effective January 1, 2020 in order to reflect plan design changes and comply with current legal requirements; and

WHEREAS, the City Council desires to authorize the City Manager, or designee, to execute the proposed plan documents on behalf of the City, along with any future amendments that contain only non-substantive and/or administrative changes to the plan documents; and

WHEREAS, the City Council desires to appoint the Human Resources Director, or designee, to act as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Official on behalf of the Plan.

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 City's interest.

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

Section 1. The City hereby adopts the restated City of Morgan Hill Section 125 Flexible Benefits Plan effective October 1, 2019, for the plan year 2020.

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

- a. Authorizes the City Manager, or designee, to duly execute the Plan on behalf of the City, along with any future amendments that contain only non-substantive and or administrative changes to the plan documents.
- b. Appoints the Human Resources Director as the HIPAA Privacy Official for the Plan.

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 4th day of September 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 September 4, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

City of Morgan Hill

Section 125 Flexible Benefits Plan

Restatement Effective October 1, 2019

Attachment: City of Morgan Hill Section 125 Plan (2448 : Cafeteria Plan)

CITY OF MORGAN HILL SECTION 125 FLEXIBLE BENEFITS PLAN

ARTICLE I. Introduction

1.1 Establishment of Plan. City of Morgan Hill ("City") hereby amends and restates the City Section 125 Flexible Benefits Plan, effective October 1, 2019. Capitalized terms shall have the meanings set forth in Article II unless defined elsewhere in the Plan.

This Plan is designed to permit an Eligible Employee to pay for his or her share of Contributions under the Medical Insurance Plan and toward Vision and Dental Insurance Benefits, as applicable, on a pre-tax Salary Reduction basis and to contribute on a pre-tax Salary Reduction basis to a Health FSA for reimbursement of certain Medical Care Expenses, and/or to a Dependent Care FSA for reimbursement of certain Dependent Care Expenses, and/or to premiums towards Group Term Life Insurance Benefits, as may be permitted by Employer, as any of these benefits may be established through the City's collective bargaining agreements, contracts, resolutions, policies, procedures, or personnel rules.

1.2 Legal Status. This Plan is intended to qualify as a cafeteria plan under Code § 125 and the regulations issued thereunder and shall be interpreted to accomplish that objective.

The Health FSA Component is intended to qualify as a self-insured medical reimbursement plan under Code § 105, with the reimbursed Medical Care Expenses eligible for exclusion from participating Employees' gross income under Code § 105(b). The Dependent Care FSA Component is intended to qualify as a dependent care assistance program under Code § 129, with the reimbursed Dependent Care Expenses eligible for exclusion from participating Employees' gross income under Code § 129(a).

The Health FSA Component and the Dependent Care FSA Component are separate plans for purposes of administration and all reporting and nondiscrimination requirements imposed by Code §§ 105 and 129. The Health FSA Component is also a separate plan for purposes of

applicable provisions of HIPAA and COBRA.

The Group Term Life Insurance Benefits are separate plan(s) for purposes of administration and nondiscrimination requirements imposed by Code § 79.

ARTICLE II. Definitions

2.1 Definitions.

Account(s) means the Health FSA Accounts and the Dependent Care FSA Accounts described in Section 7.5 for Health FSAs, and Section 8.5 for Dependent Care FSAs.

Benefits means the Premium Payment Benefits, the Health FSA Benefits, and the Dependent Care FSA Benefits, or Group Term Life Insurance Benefits offered under the Plan.

Benefit Package Option means a qualified benefit under Code § 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an HMO or a PPO option under an accident or health plan).

Change in Status means any of the events described below, as well as any other events included in subsequent changes to Code § 125, or regulations or guidance issued thereunder that the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under applicable law and under this Plan:

(a) Legal Marital Status. A change in a Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation, or annulment;

(b) Number of Dependents. Events that change a Participant's number of Dependents, including birth, death, adoption, and placement for adoption;

(c) Employment Status. Any of the following events that change the employment status of the Participant or his or her Spouse or Dependents: (1) a termination or

commencement of employment; (2) a strike or lockout; (3) a commencement of or return from an unpaid leave of absence; (4) a change in worksite; and (5) if the eligibility conditions of this Plan or other employee benefits plan of the Participant or his or her Spouse or Dependents depend on the employment status of that individual and there is a change in that individual's status with the consequence that the individual becomes (or ceases to be) eligible under this Plan or other employee benefits plan;

(d) *Dependent Eligibility Requirements.* An event that causes a Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular benefit, such as attaining a specified age, student status, or any similar circumstance; and

(e) *Change in Residence.* A change in the place of residence of the Participant or his or her Spouse or Dependents.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Code means the Internal Revenue Code of 1986, as amended.

Committee means the Benefits Committee appointed by the City.

Compensation means the wages or salary paid to an Employee by the Employer, determined prior to (a) any Salary Reduction election under this Plan; (b) any salary reduction election under any other cafeteria plan; and (c) any compensation reduction under any Code § 132(f)(4) plan; but determined after (d) any salary deferral elections under any Code § 403(b) or 457(b) plan or arrangement. Thus, "Compensation" generally means wages or salary paid to an Employee by the Employer, as reported in Box 1 of Form W-2, but adding back any wages or salary forgone by virtue of any election described in (a), (b), or (c) of the preceding sentence.

Component(s) means one or more of the following: the Dependent Care FSA Component, the Health FSA Component, or the Premium Payment Component.

Contribution(s) means the amount contributed to pay for the cost of Benefits (including self-funded Benefits as well as those that are insured), as calculated under Section 6.2 for Premium Payment Benefits, Section 7.2 for Health FSA Benefits, and Section 8.2 for Dependent Care FSA Benefits.

Dental Insurance Benefits means the Employee's Dental Insurance Plan coverage for purposes of this Plan.

Dental Insurance Plan means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing dental type benefits through a group insurance policy or policies, if separate from the Medical Insurance Plan. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

Dependent Care FSA means dependent care assistance flexible spending account program.

Dependent Care FSA Account means the account described in Section 8.5.

Dependent Care FSA Benefits has the meaning described in Section 8.1.

Dependent Care FSA Component means the component of this Plan described in Article VIII.

Dependent means: (a) for purposes of accident or health coverage (to the extent funded under the Premium Payment Component, and for purposes of the Health FSA Component), (1) a dependent as defined in Code § 105(b), (2) any child (as defined in Code § 152(f)(1)) of the Participant who as of the end of the previous calendar month has not attained age 26, and (3) any child of the Participant to whom IRS Revenue Procedure 2008-48 applies (regarding certain children of divorced or separated parents who receive more than half of their support for the calendar year from one or both parents and are in the custody of one or both parents

for more than half of the calendar year); and (b) for purposes of the Dependent Care FSA Component, a Qualifying Individual. Notwithstanding the foregoing, the Health FSA Component will provide benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of Dependent.

Dependent Care Expenses has the meaning described in Section 8.3.

Earned Income shall have the meaning given such term in Code § 129(e)(2).

Effective Date of this Plan means October 1, 2019.

Election Form/Salary Reduction Agreement means the actual or deemed paper or electronic form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan by electing Salary Reductions to pay for any of the following: Premium Payment Benefits, Health FSA Benefits, Dependent Care FSA Benefits, and Group Term Life Insurance Benefits, as may be permitted by Employer. It includes an agreement pursuant to which an Eligible Employee or Participant authorizes the Employer to make Salary Reductions. If an interactive voice-response system or web-based program is used for enrollment, the Election Form/Salary Reduction Agreement may be maintained on an electronic database in accordance with applicable laws.

Eligible Employee means an Employee eligible to participate in this Plan, as provided in Section 3.1.

Eligible Opt Out Arrangement means an Opt Out Arrangement that meets the conditions of Section 6.5.

Employee means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether

or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (b) any self-employed individual; (c) any partner in a partnership; and (d) any more-than-2% shareholder in a Subchapter S corporation. The term Employee does include former Employees for the limited purpose of allowing continued eligibility for benefits under the Plan for the remainder of the Plan Year in which an Employee ceases to be employed by the Employer, but only to the extent specifically provided elsewhere under this Plan.

Employer means City of Morgan Hill.

Employment Commencement Date means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation.

FMLA means the Family and Medical Leave Act of 1993, as amended.

Grace Period means the period that begins immediately following the close of a Plan Year and ends on the day that is 2 months plus 15 days following the close of that Plan Year.

Group Term Life Insurance Benefit means the benefit offered, if any, pursuant to Article X.

Group Term Life Insurance Plan means the plan(s) that the Employer maintains directly or indirectly for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing life insurance benefits. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

Health Flex Contribution means any Employer Contribution that meets the following requirements: (1) the Participant may not opt to receive the amount as a taxable benefit, (2) the Participant may use the amount to pay for minimum essential coverage, and (3) the Participant may use the amount exclusively to pay for medical care, within the means of Code

§ 213.

Health FSA means health flexible spending arrangement.

Health FSA Account means the account described in Section 7.5.

Health FSA Benefits has the meaning described in Section 7.1.

Health FSA Component means the component of this Plan described in Article VII.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.

HMO means the health maintenance organization Benefit Package Option (if any) under the Medical Insurance Plan.

Medical Care Expenses has the meaning described in Section 7.3.

Medical Insurance Benefits means the Employee's Medical Insurance Plan coverage for purposes of this Plan.

Medical Insurance Plan means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents who may be eligible under the terms of such plan), providing major medical-type benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

Non-Health Flex Contribution means an Employer designated Contribution that does not meet the definition of a Health Flex Contribution.

Open Enrollment Period with respect to a Plan Year means the period designated as such by the California Public Employees' Retirement System for and preceding the Plan Year, or such other period as may be prescribed by the Administrator.

Opt Out Arrangement means an arrangement where payment is made available to an Eligible Employee only if the Eligible Employee declines coverage, but may not be used to pay for Medical Insurance Benefits (whether or not the Eligible Employee receives the amount as a taxable benefit).

Participant means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III. Participants include (a) those who elect one or more of the Premium Payment Benefits, Health FSA Benefits, Dependent Care FSA Benefits, Group Term Life Insurance Benefits, and Salary Reductions to pay for such Benefits; (b) those who elect instead to receive their full salary in cash and to pay for their share of their Contributions under the Medical, Dental, and Visions Insurance Plans (as applicable) with after-tax dollars outside of this Plan (if offered) and who have not elected any Health FSA Benefits, or Dependent Care FSA Benefits; and (c) those who decline to enroll in the Medical Insurance Plan and elect to receive a cash amount under an Opt-Out Arrangement or Eligible Opt-Out Arrangement.

Period of Coverage means the Plan Year, with the following exceptions: (a) for Employees who first become eligible to participate, it shall mean the portion of the Plan Year following the date on which participation commences, as described in Section 3.1; and (b) for Employees who terminate participation, it shall mean the portion of the Plan Year prior to the date on which participation terminates, as described in Section 3.2.

Plan means the City's Section 125 Flexible Benefits Plan as set forth herein and as amended from time to time.

Plan Administrator means the City of Morgan Hill or third party administrator. The contact person is the Director of Human Resources for the City, who has the full authority to act on behalf of the Plan Administrator, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Plan Administrator, as described in Section 12.1.

Plan Year means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31).

PPO means the preferred provider organization Benefit Package Option (if any) under the Medical Insurance Plan.

Premium Payment Benefits means the Premium Payment Benefits that are paid for on a pre-tax Salary Reduction basis as described in Section 6.1.

Premium Payment Component means the component of this Plan described in Article VI.

Prior Plan Year Dependent Care FSA Amounts has the meaning described in Section 8.4(d).

QMCSO means a qualified medical child support order, as defined in ERISA §609(a).

Qualifying Dependent Care Services has the meaning described in Section 8.3.

Qualifying Individual means (a) a tax dependent of the Participant as defined in Code § 152 who is under the age of 13 and who is the Participant's qualifying child as defined in Code § 152(a)(1); (b) a tax dependent of the Participant as defined in Code § 152, but determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, who is physically or mentally incapable of self-care and who has the same principal place of abode as the Participant for more than half of the year; or (c) a Participant's Spouse who is physically or mentally incapable of self-care, and who has the same principal place of abode as the Participant for more than half of the year. Notwithstanding the foregoing, in the case of divorced or separated parents, a Qualifying Individual who is a child shall, as provided in Code § 21(e)(5), be treated as a Qualifying Individual of the custodial parent (within the meaning of Code § 152(e)) and shall not be treated as a Qualifying Individual with respect to the noncustodial parent.

Salary Reduction means the amount by which the Participant's Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the Benefits, as permitted for the applicable component, before any applicable state and/or federal taxes have been

deducted from the Participant's Compensation (i.e., on a pre-tax basis).

Spouse means an individual who is treated as a spouse for federal tax purposes.

Notwithstanding the above, for purposes of the Dependent Care FSA Component, the term Spouse shall not include (a) an individual legally separated from the Participant under a divorce or separate maintenance decree; or (b) an individual who is married to the Participant and files a separate federal income tax return, where (i) the Participant maintains a household that constitutes a Qualifying Individual's principal place of abode for more than one-half of the taxable year, (ii) the Participant furnishes more than half of the cost of maintaining such household, and (iii) during the last 6 months of such taxable year, the individual is not a member of such household.

Student means an individual who, during each of five or more calendar months during the Plan Year, is a full-time student at any educational organization that normally maintains a regular faculty and curriculum and normally has an enrolled student body in attendance at the location where its educational activities are regularly carried on.

Vision Insurance Benefits means the Employee's Vision Insurance Plan coverage for purposes of this Plan.

Vision Insurance Plan means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing vision type benefits through a group insurance policy or policies, if separate from the Medical Insurance Plan. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

ARTICLE III. Eligibility and Participation

3.1 Eligibility to Participate. Subject to the eligibility requirements under a collective bargaining agreement, contract, resolution, policy, procedure or personnel rule, if any, an individual is eligible to participate in this Plan (including the Premium Payment Component, the Health FSA Component, and the Dependent Care FSA Component) if the individual: (a) is an Employee; (b) is eligible for the Medical Insurance Plan; and (c) as Employer may require, has been employed by the Employer for 30 consecutive calendar days, counting his or her Employment Commencement Date as the first such day. Eligibility for Medical, Dental, Vision, and Group Term Life Insurance Premium Payment Benefits shall be subject to the additional requirements, if any, specified in the Medical, Dental, Vision, and Group Term Life Insurance Plans, respectively. Once an Employee has met the Plan's eligibility requirements, the Employee may elect coverage effective the first day of the next calendar month, or for any subsequent Plan Year, in accordance with the procedures described in Article IV.

3.2 Termination of Participation. A Participant will cease to be a Participant in this Plan upon the earlier of:

- (a) the termination of this Plan; or
 - (b) the date on which the Employee ceases (because of retirement, termination of employment, layoff, reduction of hours, or any other reason) to be an Eligible Employee.
- Notwithstanding the foregoing, for purposes of pre-taxing COBRA coverage certain Employees may continue eligibility for certain periods on the terms and subject to the restrictions described in Section 6.6 for Insurance Benefits and Section 7.8 for Health FSA Benefits.

Termination of participation in this Plan will automatically revoke the Participant's elections. The Medical, Dental, and Vision Insurance Benefits will terminate as of the date(s) specified in the Medical, Dental, and Vision Insurance Plans, respectively. Reimbursements from the Health FSA and Dependent Care FSA Accounts after termination of participation will be made

pursuant to Section 7.8 for Health FSA Benefits and Section 8.8 for Dependent Care FSA Benefits.

3.3 Participation Following Termination of Employment or Loss of Eligibility. If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within 30 days or less after the date of a termination of employment, then the Employee will be reinstated with the same elections that such individual had before termination. If a former Participant is rehired more than 30 days following termination of employment and is otherwise eligible to participate in the Plan, then the individual may make new elections as a new hire as described in Section 3.1. Notwithstanding the above, an election to participate in the Premium Payment Component will be reinstated only to the extent that coverage under the Medical Insurance Plan, Dental Insurance Plan, or Vision Insurance Plan is reinstated. If an Employee (whether or not a Participant) ceases to be an Eligible Employee for any reason other than for termination of employment, including (but not limited to) a reduction of hours, and then becomes an Eligible Employee again, the Employee must complete the waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

3.4 FMLA Leaves of Absence

(a) Health Benefits. Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Medical, Dental, and Vision Insurance Benefits, and Health FSA Benefits on the same terms and conditions as if the Participant were still an active Employee. That is, if the Participant elects to continue his or her coverage while on leave, the Employer will continue to pay its share of the Contributions.

An Employer may require Participants to continue all Medical Insurance Benefits, Dental

Insurance Benefits, Vision Insurance Benefits, and Health FSA Benefits coverage while they are on paid leave, provided that Participants on non-FMLA paid leave are required to continue such coverage. If so, the Participant's share of the Contributions shall be paid by the method normally used during any paid leave (e.g., on a pre-tax Salary Reduction basis).

In the event of unpaid FMLA leave (or paid FMLA leave where coverage is not required to be continued), a Participant may elect to continue his or her Medical Insurance Benefits, Dental Insurance Benefits, Vision Insurance Benefits, and Health FSA Benefits during the leave. If the Participant elects to continue coverage while on FMLA leave, then the Participant may pay his or her share of the Contributions in one of the following ways:

- with after-tax dollars, by sending monthly payments to the Employer by the due date established by the Employer;
- with pre-tax dollars, by having such amounts withheld from the Participant's ongoing Compensation (if any), including unused sick days and vacation days, or pre-paying all or a portion of the Contributions for the expected duration of the leave on a pre-tax Salary Reduction basis out of pre-leave Compensation. To pre-pay the Contributions, the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (pre-tax dollars may not be used to fund coverage during the next Plan Year); or
- under another arrangement agreed upon between the Participant and the Plan Administrator (e.g., the Plan Administrator may fund coverage during the leave and withhold "catch-up" amounts from the Participant's Compensation on a pre-tax or after-tax basis) upon the Participant's return.

If the Employer requires all Participants to continue Medical Insurance Benefits, Dental

Insurance Benefits, Vision Insurance Benefits, and Health FSA Benefits during an unpaid FMLA leave, then the Participant may elect to discontinue payment of the Participant's required Contributions until the Participant returns from leave. Upon returning from leave, the Participant will be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as agreed to by the Plan Administrator and the Participant.

If a Participant's Medical Insurance Benefits, Dental Insurance Benefits, Vision Insurance Benefits, or Health FSA Benefits coverage ceases while on FMLA leave (e.g., for non-payment of required contributions), then the Participant is permitted to re-enter the Medical Insurance Benefits, Dental Insurance Benefits, Vision Insurance Benefits, or Health FSA Benefits, as applicable, upon return from such leave on the same basis as when the Participant was participating in the Plan prior to the leave, or as otherwise required by the FMLA.

In addition, the Plan may require Participants whose Medical Insurance Benefits or Health FSA Benefits coverage terminated during the leave to be reinstated in such coverage upon return from unpaid leave, provided that Participants who return from a period of unpaid, non-FMLA leave are required to be reinstated in such coverage.

Notwithstanding the preceding sentence, with regard to Health FSA Benefits a Participant whose coverage ceased will be permitted to elect whether to be reinstated in the Health FSA Benefits at the same coverage level as was in effect before the FMLA leave (with increased contributions for the remaining period of coverage) or at a coverage level that is reduced pro rata for the period of FMLA leave during which the Participant did not pay Contributions. If a Participant elects a coverage level that is reduced pro rata for the period of FMLA leave, then the amount withheld from a

Participant's Compensation on a per-pay-period basis for the purpose of paying for reinstated Health FSA Benefits will be equal to the amount withheld prior to the period of FMLA leave.

(b) Non-Health Benefits. If a Participant goes on a qualifying leave under the FMLA, then entitlement to non-health benefits (such as Dependent Care FSA Benefits) is to be determined by the Employer's policy for providing such Benefits when Participants are on non-FMLA leave, as described in Section 3.5. If such policy permits a Participant to discontinue contributions while on leave, then the Participant will, upon returning from leave, be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as may be agreed upon by the Plan Administrator and the Participant, or as the Plan Administrator otherwise deems appropriate.

3.5 Non-FMLA Leaves of Absence. If a Participant goes on an unpaid leave of absence that does not affect eligibility, then the Participant will continue to participate and the Contributions due for the Participant will be paid by pre-payment before going on leave, by after-tax contributions while on leave, or with catch-up contributions after the leave ends, as may be determined by the Plan Administrator. If a Participant goes on an unpaid leave that affects eligibility, then the election change rules in Section 11.3(d) will apply.

ARTICLE IV. Method and Timing of Elections

4.1 Elections When First Eligible. An Employee who first becomes eligible to participate in the Plan midyear may elect to commence participation in one or more Benefits on the first day of the month after the eligibility requirements have been satisfied, provided that an Election Form/Salary Reduction Agreement is submitted to the Plan Administrator before the first day of the month in which participation will commence. An Employee who does not elect benefits

when first eligible may not enroll until the next Open Enrollment Period, unless an event occurs that would justify a midyear election change, as described under Section 11.3. The provisions of this Plan are not intended to override any exclusions, eligibility requirements, or waiting periods specified in the Medical, Dental, or Vision Insurance Plans.

4.2 Elections During Open Enrollment Period. During each Open Enrollment Period with respect to a Plan Year, the Plan Administrator shall provide a paper or electronic Election Form/Salary Reduction Agreement to each Employee who is eligible to participate in this Plan. The Employee may elect to participate in the various Components of this Plan for the next Plan Year and authorize the necessary Salary Reductions to pay for the Benefits elected by completing the Election Form/Salary Reduction Agreement. The Election Form/Salary Reduction Agreement must be returned to the Plan Administrator on or before the last day of the Open Enrollment Period, and it shall become effective on the first day of the next Plan Year.

4.3 Failure of Eligible Employee to File an Election Form/Salary Reduction Agreement. If an Eligible Employee fails to file an Election Form/Salary Reduction Agreement within the applicable time periods described in Sections 4.1 and 4.2, then the Employee may not elect any Benefits under the Plan (a) until the next Open Enrollment Period; or (b) until an event occurs that would justify a midyear election change, as described under Section 11.3 or 11.4. If an Employee who fails to file an Election Form/Salary Reduction Agreement is eligible for Medical Insurance Benefits and has made an effective election for such Benefits, then the Employee's share of the Contributions for such Benefits will be paid with after-tax dollars outside of this Plan until such time as the Employee files, during a subsequent Open Enrollment Period (or after an event occurs that would justify a midyear election change as described under Section 11.3), a timely Election Form/Salary Reduction Agreement to elect Premium Payment Benefits. Until the Employee files such an election, the Employer's portion

of the Contribution will also be paid outside of this Plan.

4.4 Irrevocability of Elections. Unless an exception applies (as described in Article XI), a Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates.

ARTICLE V. Benefits Offered and Method of Funding

5.1 Benefits Offered. When first eligible or during the Open Enrollment Period as described under Article IV, Participants will be given the opportunity to elect one or more of the following Benefits:

- (a) Premium Payment Benefits, as described in Article VI;
- (b) Health FSA Benefits, as described in Article VII; and
- (c) Dependent Care FSA Benefits, as described in Article VIII.

In no event shall Benefits under the Plan be provided in the form of deferred compensation. Notwithstanding the foregoing, amounts remaining in a Participant's Health FSA Account can be used to reimburse the Participant for Medical Care Expenses during the Grace Period immediately following the close of that Plan Year as provided in Article VII. In addition, amounts remaining in a Participant's Dependent Care FSA Account at the end of a Plan Year can be used to reimburse the Participant for Dependent Care Expenses that are incurred during the Grace Period immediately following the close of that Plan Year as provided in Article VIII, and a Participant's Salary Reductions during a Plan Year under the Premium Payment Component may be applied by the Employer to pay the Participant's share of the Contributions for Medical Insurance Benefits that are provided to the Participant during the Grace Period immediately following the close of that Plan Year. No Grace Period is available for Health FSA Benefits.

5.2 Employer and Participant Contributions

(a) Employer Contributions. For Participants who elect Medical Insurance Benefits described in Article VI, the Employer may contribute a portion of the Contributions as provided in the open enrollment materials furnished to Employees, the Election Form/Salary Reduction Agreement, and/or any applicable collective bargaining agreement. The Employer may also designate Health Flex Contributions or Non-Health Flex Contribution that a Participant may allocate to the Medical Insurance Plan or Health FSA Benefit, as provided by any applicable collective bargaining agreement, Employer policy, or other contract related to this Plan. There are no Employer contributions for Health FSA Benefits or Dependent Care FSA Benefits.

(b) Participant Contributions. Participants who elect Medical Insurance Benefits may pay for the cost of that coverage with after-tax deductions or on a pre-tax Salary Reduction basis by completing an Election Form/Salary Reduction Agreement. Participants who elect Health FSA Benefits or Dependent Care FSA Benefits must pay for the cost of that coverage on a pre-tax Salary Reduction basis by completing an Election Form/Salary Reduction Agreement.

5.3 Using Salary Reductions to Make Contributions

(a) Salary Reductions per Pay Period. The Salary Reduction for a pay period for a Participant is, for the Benefits elected, an amount equal to (1) the annual Contributions for such Benefits, divided by the number of pay periods in the Period of Coverage; (2) an amount otherwise agreed upon between the Employer and the Participant; or (3) an amount deemed appropriate by the Plan Administrator. If a Participant increases his or her election under the Health FSA Component, or Dependent Care FSA Component to the extent permitted under Section 11.3, the Salary Reductions per pay period will be, for the Benefits affected, an amount equal to (1) the new reimbursement limit elected pursuant to Section 11.3, less the Salary Reductions made prior to such election change,

divided by the number of pay periods in the balance of the Period of Coverage commencing with the election change; (2) an amount otherwise agreed upon between the Employer and the Participant; or (3) an amount deemed appropriate by the Plan Administrator.

(b) *Considered Employer Contributions for Certain Purposes.* Salary Reductions are applied by the Employer to pay for the Participant's share of the Contributions for the Premium Payment Benefits, Health FSA Benefits, and the Dependent Care FSA Benefits and, for the purposes of this Plan and the Code, are considered to be Employer contributions.

(c) *Salary Reduction Balance Upon Termination of Coverage.* If, as of the date that any elected coverage under this Plan terminates, a Participant's year-to-date Salary Reductions exceed or are less than the Participant's required Contributions for the coverage, then the Employer will, as applicable, either return the excess to the Participant as additional taxable wages or recoup the due Salary Reduction amounts from any remaining Compensation.

(d) *After-Tax Contributions for Premium Payment Benefits.* For those Participants who elect to pay their share of the Contributions for any of the Medical Insurance Benefits with after-tax deductions, both the Employee and Employer portions of such Contributions will be paid outside of this Plan.

5.4 Funding This Plan. All of the amounts payable under this Plan shall be paid from the general assets of the Employer, but Premium Payment Benefits are paid as provided in the applicable insurance policy. Nothing herein will be construed to require the Employer or the Plan Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or

security or other interest in any fund, account, or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid.

5.5 Forfeiture and Application of Unused Flexible Spending Accounts. After the period for filing claims specified in Article VII and Article VIII has expired for a Plan Year (including any Grace Period, if applicable), and after all properly submitted claims for Medical Care Expenses and Dependent Care Expenses have been paid for such Plan Year, the Plan Administrator will determine the total credits remaining in Participants' Flexible Spending Accounts with respect to that Plan Year. Such credits will be forfeited by the Participants and will remain the property of the Employer; however, the Employer may use the forfeitures (a) to pay reasonable administrative expenses, to reduce the required premiums for the following year, and/or to reimburse claims incurred above a participant's elective limit as long as such reimbursements are made in a nondiscriminatory manner, or (b) as otherwise permitted by law. In addition, any Flexible Spending Account benefit payments that are unclaimed (e.g., uncashed benefit checks) as of the last day of the Plan Year following the Period of Coverage in which the underlying expense was incurred shall be forfeited and applied as described above.

ARTICLE VI. Premium Payment Component

6.1 Benefits. The Premium Payment Component offers benefits under the Medical Insurance Plan, the Dental Insurance Plan, the Vision Insurance Plan, and the Group Term Life Insurance Plans. Notwithstanding any other provision in this Plan, the Medical, Dental, and Vision Insurance Benefits are subject to the terms and conditions of the Medical, Dental, and Vision Insurance Plans, respectively, and no changes can be made with respect to such Benefits under this Plan (such as midyear changes in election) if such changes are not permitted under the applicable Insurance Plan. An Eligible Employee can (a) elect benefits under the Premium Payment Component by electing to pay for his or her share of the Contributions for Medical,

Dental, Vision, and/or Group Term Life Insurance Benefits on a pre-tax Salary Reduction basis (Premium Payment Benefits); or (b) elect no benefits under the Premium Payment Component and pay for his or her share of the Contributions, if any, for Medical, Dental, Vision, and/or Group Term Life Insurance Benefits with after-tax deductions outside of this Plan. A Participant's Salary Reductions during a Plan Year under the Premium Payment Component may be applied by the Employer to pay the Participant's share of the Contributions for Medical, Dental, Vision, and/or Group Term Life Insurance Benefits that are provided to the Participant during the period that begins immediately following the close of that Plan Year and ends on the day that is 2 months plus 15 days following the close of that Plan Year (the Grace Period).

6.2 Contributions for Cost of Coverage. The annual Employer Contribution for a Participant's Premium Payment Benefits is equal to the amount as set by the Employer, as described in an applicable collective bargaining agreement, memorandum of understanding, policy or other applicable document, which may or may not be the same amount charged by the insurance carrier. The Employer may also designate Health Flex Contributions that a Participant may allocate to the Medical Insurance Plan. The Employer may specify the Employer Contribution limitation for each of the Premium Payment Component Benefits.

6.3 Benefits Plans. The types and amounts of Medical, Dental, Vision, and Group Term Life Insurance Benefits, the requirements for participating in the Medical, Dental, Vision, and Group Term Life Insurance Plans, and the other terms and conditions of coverage, benefits, and claims of the Medical, Dental, Vision, and Group Term Life Insurance Plans are set forth in the Medical, Dental, Vision, and Group Term Life Insurance Plans, respectively, not this Plan.

6.4 Opt Out Arrangement. The Employer may establish an Opt Out Arrangement for Participants who decline to enroll in the Medical Insurance Plan. If an Opt Out Arrangement is established, the Participant may elect to take a cash amount established by the Employer in

lieu of enrolling in the Medical Insurance Plan.

6.5 Eligible Opt Out Arrangement. An Employer may also establish an Eligible Opt Out Arrangement under this Plan as a condition to an Participant receiving a cash amount established by the Employer in lieu of Medical Insurance Benefits. The conditions that must be satisfied for an Eligible Opt Out Arrangement are as follows:

- (a) The Participant must provide proof of minimum essential coverage ("MEC") through another source (other than coverage in the individual market, whether or not obtained through Covered California);
- (b) The proof of coverage must show that the Participant and all individuals in the Participant's expected tax family have (or will have) the required minimum essential coverage. A Participant's expected tax family includes all individuals for whom the Participant reasonably expects to claim a personal exemption deduction for the taxable year(s) that cover the Participant's plan year to which the opt-out arrangement applies;
- (c) The Participant must provide reasonable evidence of the MEC for the applicable period. Reasonable evidence may include an attestation by the Participant;
- (d) The Participant must provide the evidence/attestation every Plan Year;
- (e) The Participant must provide the evidence/attestation no earlier than a reasonable time before coverage starts (e.g. open enrollment). The evidence/attestation may also be provided within a reasonable time after the Plan Year starts; and
- (f) The opt-out payment cannot be made (and the Employer must not in fact make payment) if the Employer knows or has reason to know that the Participant or tax family member does not have the alternative coverage.

6.6 COBRA Contributions. Contributions for COBRA coverage for Medical, Dental, and Vision Insurance Benefits may be paid on a pre-tax basis for current Employees receiving taxable

compensation where COBRA coverage arises either (a) because the Employee ceases to be eligible because of a reduction of hours or (b) because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage. For individuals who cease to be eligible because of retirement, termination of employment, or layoff, Contributions for COBRA coverage for Medical, Dental, and Vision Insurance Benefits shall be paid on an after-tax basis (unless otherwise permitted by the Plan Administrator on a uniform and consistent basis). Contributions for COBRA coverage may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year.

ARTICLE VII. Health FSA Component

7.1 Health FSA Benefits. An Eligible Employee can elect to participate in the Health FSA Component by electing (a) to receive benefits in the form of reimbursements for Medical Care Expenses (Health FSA Benefits); and (b) to pay the Contribution for such Health FSA Benefits on a pre-tax Salary Reduction basis. Notwithstanding any other provision of this Plan, an Eligible Employee shall not be eligible for the Health FSA Component unless he or she is also eligible for the Medical Insurance Plan.

7.2 Contributions for Cost of Coverage of Health FSA Benefits. A Participant may direct Health Flex Contributions to Health FSA Benefits as provided by a collective bargaining agreement, Employer policy, or other contract related to this Plan, subject to the limitations in Section 5.2(a). The annual Contribution, including any Health Flex Contribution, for a Participant's Health FSA Benefits is equal to the annual benefit amount elected by the Participant, subject to the dollar limits set forth in Section 7.4(b).

7.3 Eligible Medical Care Expenses for Health FSA. A Participant may receive reimbursement for Medical Care Expenses incurred during the Period of Coverage for which a Health FSA election is in force.

(a) Incurred. A Medical Care Expense is incurred at the time the medical care or service giving rise to the expense is furnished and not when the Participant is billed or pays for the medical care.

(b) Medical Care Expenses. Medical Care Expenses means expenses incurred by a Participant or his or her Spouse or Dependents for medical care, as defined in Code § 213(d), but only to the extent that the expense has not been reimbursed through insurance or otherwise. If only a portion of a Medical Care Expense has been reimbursed elsewhere (e.g., because the Medical Insurance Plan imposes co-payment or deductible limitations), then the Health FSA can reimburse the remaining portion of such Medical Care Expense if it otherwise meets the requirements of this Article VII. Notwithstanding the foregoing, the term Medical Care Expenses does not include:

- (1) premium payments;
- (2) medicines or drugs, unless the medicine or drug is a prescribed drug or is insulin;
- (3) cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease (for this purpose, "cosmetic surgery" means any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease); or
- (4) any other expense excluded under Appendix A or otherwise under the terms of this Plan.

The Plan Administrator may promulgate procedures regarding the eligibility of various expenses for reimbursement as Medical Care Expenses and may limit reimbursement of

expenses described in such procedures.

7.4 Maximum and Minimum Benefits for Health FSA

(a) *Reimbursement Availability; Uniform Coverage.* The maximum dollar amount elected by the Participant for reimbursement of Medical Care Expenses incurred during a Period of Coverage shall be available at all times during the Period of Coverage, regardless of the actual amounts credited to the Participant's Health FSA Account pursuant to Section 7.5. Reimbursements will not be available for Medical Care Expenses incurred after participation in this Plan has terminated, unless the Participant has elected COBRA as provided in Section 7.8.

(b) *Maximum and Minimum Dollar Limits.* The maximum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Medical Care Expenses incurred in any Period of Coverage shall be \$2,700 in 2019 (and as adjusted from time to time pursuant to Code § 125(i)), subject to Sections 7.4(c) and 7.5(c). The minimum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Medical Care Expenses incurred in any Period of Coverage shall be \$200. Reimbursements due for Medical Care Expenses incurred by the Participant's Spouse or Dependents shall be charged against the Participant's Health FSA Account.

(c) *Changes.* For Plan Years beginning after 2019, the maximum and minimum dollar limit may be changed by the Plan Administrator and shall be communicated to Employees through the Election Form/Salary Reduction Agreement or another document, provided that the maximum dollar limit shall not exceed the maximum amount permitted under Code § 125(i).

(d) *Effect on Maximum Benefits If Election Change Permitted.* Any change in an

election under Article XI (other than under Section 11.3(c) for FMLA leave) that increases contributions to the Health FSA Component also will change the maximum reimbursement benefits for the balance of the Period of Coverage commencing with the election change. Such maximum reimbursement benefits for the balance of the Period of Coverage shall be calculated by adding (1) the contributions (if any) made by the Participant as of the end of the portion of the Period of Coverage immediately preceding the change in election, to (2) the total contributions scheduled to be made by the Participant during the remainder of such Period of Coverage to the Health FSA Account, reduced by (3) all reimbursements made during the entire Period of Coverage. Any change in an election under Section 11.3(c) for FMLA leave will change the maximum reimbursement benefits in accordance with the regulations governing the effect of the FMLA on the operation of cafeteria plans. A Participant, who has a deficit balance under the Health FSA Account may not revoke or reduce his/her election under such account unless and until the deficit has been eliminated.

(e) *Grace Period, Special Rules for Claims Incurred During Grace Period.* A Participant with Health FSA coverage in effect on the last day of the Plan Year, may be reimbursed for Medical Care Expenses incurred during a Grace Period from amounts remaining in his or her Health FSA Account at the end of the Plan Year to which that Grace Period relates (“Prior Plan Year Health FSA Amounts”).

- Medical Care Expenses incurred during a Grace Period and approved for reimbursement in accordance with Section 7.7 will be reimbursed first from any available prior Plan Year Health FSA Amounts and then from any amounts that are available to reimburse expenses that are incurred during the current Plan Year. An individual's prior Plan Year Health FSA Amounts will be debited for any reimbursement of Medical Care Expenses incurred during the Grace Period that is

made from such Prior Plan Year Health FSA Amounts.

- Claims for reimbursement of Medical Care Expenses incurred during a Grace Period must be submitted no later than the March 31 following the close of the Plan Year to which the Grace Period relates in order to be reimbursed from prior Plan Year Health FSA Amounts. Any prior Plan Year Health FSA Amounts that remain after all reimbursements have been made for the Plan Year and its related Grace Period shall not be carried over to reimburse the Participant for expenses incurred in any subsequent period. The Participant will forfeit all rights with respect to these amounts, which will be subject to the Plan's provisions regarding forfeitures in Sections 5.5 and 7.6.

7.5 Establishment of Health FSA Account. The Plan Administrator will establish and maintain a Health FSA Account with respect to each Participant for each Plan Year or other Period of Coverage for which the Participant elects to participate in the Health FSA Component, but it will not create a separate fund or otherwise segregate assets for this purpose. The Account so established will merely be a recordkeeping account with the purpose of keeping track of contributions and determining forfeitures under Sections 5.5 and 7.6.

(a) *Crediting of Accounts.* A Participant's Health FSA Account for a Plan Year or other Period of Coverage will be credited periodically during such period with an amount equal to the Participant's Salary Reductions elected to be allocated to such Account.

(b) *Debiting of Accounts.* A Participant's Health FSA Account for a Plan Year or other Period of Coverage will be debited for any reimbursement of Medical Care Expenses incurred during such period.

(c) *Available Amount Not Based on Credited Amount.* As described in Section 7.4, the amount available for reimbursement of Medical Care Expenses is the Participant's

annual benefit amount, reduced by prior reimbursements for Medical Care Expenses incurred during the Plan Year or other Period of Coverage; it is not based on the amount credited to the Health FSA Account at a particular point in time. Thus, a Participant's Health FSA Account may have a negative balance during a Plan Year or other Period of Coverage, but the aggregate amount of reimbursement shall in no event exceed the maximum dollar amount elected by the Participant under this Plan.

7.6 Forfeiture of Health FSA Accounts; Use-or-Lose Rule.

(a) *Use-or-Lose Rule.* If any balance remains in the Participant's Health FSA Account for a Period of Coverage after all reimbursements have been made for the Period of Coverage, then such balance shall not be carried over to reimburse the Participant for Medical Care Expenses incurred during a subsequent Plan Year. The Participant shall forfeit all rights with respect to such balance.

(b) *Use of Forfeitures.* All forfeitures under this Plan shall be used as provided by Section 5.5.

7.7 Reimbursement Claims Procedure for Health FSA.

(a) *Timing.* Within 30 days after receipt by the Plan Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's Medical Care Expenses (if the Plan Administrator approves the claim), or the Plan Administrator will notify the Participant that his or her claim has been denied. This time period may be extended by an additional 15 days for matters beyond the control of the Plan Administrator, including in cases where a reimbursement claim is incomplete. The Plan Administrator will provide written notice of any extension, including the reasons for the extension, prior to the expiration of the initial 15-day period. If the claim is incomplete, the Participant will have 45 days in which to complete

the previously incomplete reimbursement claim.

(b) Claims Substantiation. A Participant who has elected to receive Health FSA Benefits for a Period of Coverage may apply for reimbursement by submitting a request in writing to the Plan Administrator in such form as the Plan Administrator may prescribe, by no later than the March 31 following the close of the Plan Year in which the Medical Care Expense was incurred (except that for a Participant who ceases to be eligible to participate, this must be done no later than 90 days after the date that eligibility ceases, as described in Section 7.8) setting forth:

- the person(s) on whose behalf Medical Care Expenses have been incurred;
- the nature and date of the Expenses so incurred;
- the amount of the requested reimbursement;
- a statement that such Expenses have not otherwise been reimbursed and that the Participant will not seek reimbursement through any other source; and
- other such details about the expenses that may be requested by the Plan Administrator in the reimbursement request form or otherwise.

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Medical Care Expenses have been incurred and showing the amounts of such Expenses, along with any additional documentation that the Plan Administrator may request. Except for the final reimbursement claim for a Participant's Health FSA Account for a Plan Year or other Period of Coverage, no claim for reimbursement may be made unless and until the aggregate claim for reimbursement is at least \$25. If the Health FSA is accessible by an electronic payment card (e.g., debit card, credit card, or similar arrangement), the Participant will be required to comply with substantiation procedures established by the Plan Administrator in accordance with Section 7.9 and applicable IRS guidance regarding

electronic payment card programs.

(c) *Claims Denied.* For reimbursement claims that are denied, see the appeals procedure in Article XII.

(d) *Claims Ordering.* All claims for reimbursement under the Health FSA Component will be paid in the order in which they are approved.

7.8 Reimbursements From Health FSA After Termination of Participation; COBRA.

When a Participant ceases to be a Participant under Section 3.2, the Participant's Salary Reductions and election to participate will terminate. Except as otherwise provided in this Section 7.8, the Participant will not be able to receive reimbursements for Medical Care Expenses incurred after the end of the day on which the Participant's employment terminates or the Participant otherwise ceases to be eligible. However, such Participant (or the Participant's estate) may claim reimbursement for any Medical Care Expenses incurred during the Period of Coverage prior to the date that the Participant ceases to be eligible, provided that the Participant (or the Participant's estate) files a claim within 90 days after the date that the Participant ceases to be a Participant.

To the extent required by COBRA, a Participant whose coverage terminates under the Health FSA Component as the result of a COBRA qualifying event shall be given the opportunity to continue on a self-pay basis the same coverage that he or she had under the Health FSA Component the day before the qualifying event for the periods prescribed by COBRA plus a 2% administrative fee. Individuals will only be eligible for COBRA continuation coverage if, under Section 7.5, they have a positive Health FSA Account balance at the time of a COBRA qualifying event (taking into account all claims submitted before the date of the qualifying event). If COBRA is elected, it will be available only for the remainder of the Plan Year in which the qualifying event occurs; however, qualified beneficiaries who continue coverage through the

end of the Plan Year may be reimbursed for Medical Care Expenses incurred during the Grace Period from unused Health FSA amounts in accordance with Section 7.4. Such continuation coverage shall be subject to all conditions and limitations under COBRA, except that it shall not be terminated early for after-acquired group health coverage or Medicare entitlement.

Contributions for coverage for Health FSA Benefits may be paid on a pre-tax basis for current Employees receiving taxable compensation where COBRA coverage arises either (a) because the Employee ceases to be eligible because of a reduction of hours or (b) because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage. For all other individuals, Contributions for COBRA coverage for Health FSA Benefits shall be paid on an after-tax basis unless permitted otherwise by the Plan Administrator on a uniform and consistent basis. Contributions for COBRA coverage may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year.

7.9 Electronic Payment Cards. If the Employer allows the Health FSA to be accessed by an electronic payment card (e.g., debit card, credit card, or similar arrangement), Participants will be required to comply with substantiation procedures established by the Plan Administrator in accordance with applicable IRS guidance regarding electronic payment card programs.

ARTICLE VIII. Dependent Care FSA Component

8.1 Dependent Care FSA Benefits. An Eligible Employee can elect to participate in the Dependent Care FSA Component by electing to receive benefits in the form of reimbursements for Dependent Care Expenses and to pay the Contribution for such benefits on a pre-tax Salary Reduction basis.

8.2 Contributions for Cost of Coverage for Dependent Care FSA Benefits. The annual Contribution for a Participant's Dependent Care FSA Benefits is equal to the annual benefit amount elected by the Participant, subject to the dollar limits set forth in Section 8.4(b). (For

example, if the maximum \$5,000 annual benefit amount is elected, then the annual Contribution amount is also \$5,000.)

8.3 Eligible Dependent Care Expenses. Under the Dependent Care FSA Component, a Participant may receive reimbursement for Dependent Care Expenses incurred during the Period of Coverage for which an election is in force. In addition, certain individuals may receive reimbursement for Dependent Care Expenses incurred during the Grace Period immediately following the close of a Plan Year from amounts remaining in their Dependent Care FSA Accounts for that Plan Year in accordance with Section 8.4(d).

(a) Incurred. A Dependent Care Expense is incurred at the time the Qualifying Dependent Care Services giving rise to the expense is furnished, not when the Participant is formally billed for, is charged for, or pays for the Qualifying Dependent Care Services (e.g., services rendered for the month of June are not fully incurred until June 30 and cannot be reimbursed in full until then).

(b) Dependent Care Expenses. "Dependent Care Expenses" are expenses that are considered to be employment-related expenses under Code § 21(b)(2) (relating to expenses for the care of a Qualifying Individual necessary for gainful employment of the Employee and Spouse, if any, and expenses for incidental household services), if paid for by the Eligible Employee to obtain Qualifying Dependent Care Services-provided, however, that this term shall not include any expenses for which the Participant or other person incurring the expense is reimbursed for the expense through insurance or any other plan. If only a portion of a Dependent Care Expense has been reimbursed elsewhere (e.g., because the Spouse's Dependent Care FSA imposes maximum benefit limitations), the Dependent Care FSA can reimburse the remaining portion of such Expense if it otherwise meets the requirements of this Article VIII.

(c) Qualifying Dependent Care Services. "Qualifying Dependent Care Services" means services that: (1) relate to the care of a Qualifying Individual that enable the Participant and his or her Spouse to remain gainfully employed after the date of participation in the Dependent Care FSA Component and during the Period of Coverage; and (2) are performed-

- in the Participant's home; or
- outside the Participant's home for (1) the care of a Participant's qualifying child who is under age 13; or (2) the care of any other Qualifying Individual who regularly spends at least eight hours per day in the Participant's household. In addition, if the expenses are incurred for services provided by a dependent care center, then the center must comply with all applicable state and local laws and regulations.

(d) Exclusion. Dependent Care Expenses do not include amounts paid to:

- an individual with respect to whom a personal exemption is allowable under Code § 151(c) to a Participant or his or her Spouse;
- a Participant's Spouse;
- a Participant's child (as defined in Code § 152(f)(1)) who is under 19 years of age at the end of the year in which the expenses were incurred; or
- a parent of a Participant's under age 13 qualifying child as defined in Code § 152(c) (e.g., a former spouse who is the child's noncustodial parent).

8.4 Maximum and Minimum Benefits for Dependent Care FSA.

(a) Maximum Reimbursement Available. The dollar amount elected by the Participant for reimbursement of Dependent Care Expenses incurred during a Period of Coverage shall only be available during the Period of Coverage to the extent of the actual amounts credited to the Participant's Dependent Care FSA Account pursuant to Section 8.5, reduced by reimbursements during the Period of Coverage. (No reimbursement will be

made to the extent that such reimbursement would exceed the balance in the Participant's Account.) Payment shall be made to the Participant in cash as reimbursement for Dependent Care Expenses incurred during the Period of Coverage for which the Participant's election is effective (or during a Grace Period, if applicable under Section 8.4(d)), provided that the other requirements of this Article VIII have been satisfied.

(b) Maximum and Minimum Dollar Limits. The maximum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Dependent Care Expenses incurred in any Period of Coverage shall be the lowest of the following amounts:

- \$5,000 if the Participant is married and files a joint return or single;
- \$5,000 if the Participant is married and files a separate federal income tax return but only if the following conditions are met: (1) the Participant maintains as his or her home a household that constitutes (for more than half of the taxable year) the principal abode of a Qualifying Individual (i.e., the Dependent for whom the Participant is eligible to receive reimbursements under the Dependent Care FSA); (2) the Participant furnishes over half of the cost of maintaining such household during the taxable year; and (3) during the last six months of the taxable year, the Participant's Spouse is not a member of such household;
- \$2,500 if the Participant is married and files a separate federal income tax return under circumstances other than those described above;
- the Participant's Earned Income for the calendar year; or
- the Earned Income of the Participant's Spouse for the calendar year (for this purpose, a Spouse will be deemed to have earned income of at least \$250 (\$500 if the Participant has two or more Qualifying Individuals) for each month in which the

Spouse is either (1) physically or mentally incapable of self-care (provided that the Spouse must have the same principal place of abode as the Participant for more than one-half of such year), or (2) a Student).

The minimum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Dependent Care Expenses incurred in any Period of Coverage shall be \$200.

(c) *Changes.* For subsequent Plan Years, the maximum and minimum dollar limit may be changed by the Plan Administrator and shall be communicated to Employees through the Election Form/Salary Reduction Agreement, applicable collective bargaining agreement, Employer policy, or other document relating to this Plan.

(d) *Grace Periods; Special Rules for Claims Incurred During a Grace Period.* A

Participant with Dependent Care FSA coverage in effect on the last day of the Plan Year, may be reimbursed for Dependent Care Expenses incurred during a Grace Period from amounts remaining in his or her Dependent Care FSA Account at the end of the Plan Year to which that Grace Period relates ("Prior Plan Year Dependent Care FSA Amounts").

- Dependent Care Expenses incurred during a Grace Period and approved for reimbursement in accordance with Section 8.7 will be reimbursed first from any available prior Plan Year Dependent Care FSA Amounts and then from any amounts that are available to reimburse expenses that are incurred during the current Plan Year. An individual's prior Plan Year Dependent Care FSA Amounts will be debited for any reimbursement of Dependent Care Expenses incurred during the Grace Period that is made from such Prior Plan Year Dependent Care FSA Amounts.
- Claims for reimbursement of Dependent Care Expenses incurred during a Grace Period must be submitted no later than the March 31 following the close of the Plan

Year to which the Grace Period relates in order to be reimbursed from prior Plan Year Dependent Care FSA Amounts. Any prior Plan Year Dependent Care FSA Amounts that remain after all reimbursements have been made for the Plan Year and its related Grace Period shall not be carried over to reimburse the Participant for expenses incurred in any subsequent period. The Participant will forfeit all rights with respect to these amounts, which will be subject to the Plan's provisions regarding forfeitures in Sections 5.5 and 8.6.

8.5 Dependent Care FSA Account. The Plan Administrator will establish and maintain a Dependent Care FSA Account with respect to each Participant who has elected to participate in the Dependent Care FSA Component as a recordkeeping account for the purpose of tracking contributions and forfeitures, but it will not create a separate fund or otherwise segregate assets for this purpose. A Participant's Dependent Care FSA Account will be credited during each Period of Coverage with an amount equal to the Participant's Salary Reduction Elections and debited for any reimbursement of Dependent Care Expenses incurred during the Period of Coverage (or during any applicable Grace Period). The amount available for reimbursement of Dependent Care Expenses may not exceed the year-to-date amount credited to the Participant's Dependent Care FSA Account, less any prior reimbursements for Dependent Care Expenses incurred during the Plan Year (or during the Grace Period, if applicable)-i.e., it is based on the amount credited to the Dependent Care FSA Account at a particular point in time. Thus, a Participant's Dependent Care FSA Account may not have a negative balance.

8.6 Forfeiture of Dependent Care FSA Accounts; Use-It-or-Lose-It Rule. Except for reimbursements for expenses incurred during a Grace Period pursuant to Section 8.4(d), any balance remaining in the Participant's Dependent Care FSA Account for a Period of Coverage after all reimbursements have been made for that Period of Coverage (and the related Grace Period) shall not be carried over to reimburse Dependent Care Expenses incurred during a

subsequent Plan Year. The Participant shall forfeit all rights with respect to such balance. All forfeitures under this Plan shall be used as provided by Section 5.5.

8.7 Reimbursement Claims Procedure for Dependent Care FSA.

(a) *Timing.* Within 30 days after receipt by the Plan Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's approved Dependent Care Expenses or the Plan Administrator will notify the Participant that his or her claim has been denied. This time period may be extended by an additional 15 days for matters beyond the control of the Plan Administrator, including in cases where a reimbursement claim is incomplete. The Plan Administrator will provide written notice of any extension before the expiration of the initial 15-day period, including the reasons for the extension, and will allow the Participant 45 days in which to complete the previously incomplete reimbursement claim.

(b) *Claims Substantiation.* A Participant who has elected to receive Dependent Care FSA Benefits for a Period of Coverage may apply for reimbursement by submitting a request for reimbursement in writing to the Plan Administrator in such form as the Plan Administrator may prescribe, by no later than the March 31 following the close of the Plan Year in which the Dependent Care Expense was incurred (except that for a Participant who ceases to be eligible to participate, this must be done no later than 90 days after the date that eligibility ceases, as described in Section 8.8), setting forth:

- the person(s) on whose behalf Dependent Care Expenses have been incurred;
- the nature and date of the Expenses so incurred;
- the amount of the requested reimbursement;
- the name of the person, organization, or entity to whom the Expense was or is to be paid, and taxpayer identification number (Social Security number, if the recipient is a person);

- a statement that such Expenses have not otherwise been reimbursed and that the Participant will not seek reimbursement through any other source;
- the Participant's certification that he or she has no reason to believe that the reimbursement requested, added to his or her other reimbursements to date for Dependent Care Expenses incurred during the same calendar year, will exceed the applicable statutory limit for the Participant as described in Section 8.4(b); and
- other such details about the expenses that may be requested by the Plan Administrator in the reimbursement request form or otherwise (e.g., a more detailed certification from the Participant).

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Dependent Care Expenses have been incurred and showing the amounts of such Expenses, along with any additional documentation that the Plan Administrator may request. Except for the final reimbursement claim for a Period of Coverage, no claim for reimbursement may be made unless and until the aggregate claim for reimbursement is at least \$25.

(c) *Claims Denied.* For reimbursement claims that are denied, see the appeals procedure in Article XII.

ARTICLE IX. HIPAA Provisions for Health FSA

9.1 General. As a HIPAA Health Plan, the Health FSA shall comply with the standards for privacy of protected health information as set forth in the Privacy Rule, the security standards for the protection of Electronic PHI as set forth in the Security Rule, and the notification requirements for Breaches of Unsecured PHI under the Breach Notification Rule.

9.2 Definitions. For purposes of this Article, the following definitions shall apply:

(a) "Breach" shall mean the acquisition, access, use, or disclosure of an individual's PHI in a manner not permitted under the Privacy Rule. A Breach shall be presumed unless the Plan determines there is a low probability that the PHI has been compromised. A Breach does not include: (1) an unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access, or use was in good faith and within the scope of authority and does not result in a further impermissible use or disclosure; (2) an inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI at the same covered entity or business associate or organized health care arrangement, and the information received is not further used or disclosed in a manner not permitted under the Privacy Rule; or (3) a disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

(b) "Breach Notification Rule" means the regulations issued under HIPAA set forth in subpart D of 45 CFR Part 164.

(c) "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media.

(d) "Health Care Operations" is as defined under 45 CFR § 160.501.

(e) "HIPAA Health Plan," as defined under 45 CFR § 160.103, means an individual or group plan that provides, or pays the cost of, medical care, and includes those plans and arrangements listed in 45 CFR §160.103.

(f) "Payment" is as defined under 45 CFR §160.501, and means activities undertaken by a HIPAA Health Plan to obtain contributions or to determine or fulfill its responsibility for coverage and provision of benefits, or to obtain or provide reimbursement for the

provision of health care.

(g) "Privacy Policy" means the Employer HIPAA Privacy Policy.

(h) "Privacy Rule" means the regulations issued under HIPAA set forth in subpart E of 45 CFR Part 164.

(i) "Protected Health Information" or "PHI" means individually identifiable health information that (1) relates to the past, present, or future physical or mental condition of a current or former Participant, Spouse, or Dependent, provision of health care to a Participant, Spouse, or Dependent, or payment for such health care; (2) can either identify the Participant, Spouse, or Dependent, or there is a reasonable basis to believe the information can be used to identify the Participant, Spouse, or Dependent; and (3) is received or created by or on behalf of the Health FSA.

(j) "Responsible Employee" means an employee (including a contract, temporary, or leased employee) of the Health FSA or of the Employer whose duties (1) require that the employee have access to PHI for purposes of Payment or Health Care Operations; or (2) make it likely that the employee will receive or have access to PHI. Persons designated as Responsible Employees are described in Section 9.3. A Responsible Employee shall also include any other employee (other than a designated Responsible Employee) who creates or receives PHI on behalf of a Health FSA, even though the employee's duties do not (or are not expected to) include creating or receiving PHI. Responsible Employees are within the Employer's HIPAA firewall when they perform Health FSA functions.

(k) "Security Incident," as defined under 45 CFR § 164.304, means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(l) "Security Rule" means the regulations issued under HIPAA set forth in subpart C of 45 CFR Part 164.

9.3 Responsible Employees. Only Responsible Employees shall be permitted to use, disclose, create, receive, access, maintain, or transmit PHI or Electronic PHI on behalf of a Health FSA. The use or disclosure of PHI or Electronic PHI by Responsible Employees shall be restricted to the Health FSA administration functions that the Employer performs on behalf of a Health FSA pursuant to Section 9.4.

Employees who perform the following functions on behalf of the Health FSA are Responsible Employees: (1) claims determination and processing functions; (2) Health FSA vendor relations functions; (3) benefits education and information functions; (4) Health FSA administration activities; (5) legal department activities; (6) Health FSA compliance activities; (7) information systems support activities; (8) internal audit functions; and (9) human resources functions.

9.5 Prohibited Uses and Disclosures. Notwithstanding anything in the Plan to the contrary, use or disclosure of Protected Health Information is prohibited in the following situations.

(a) Genetic Information. Use or disclosure of Protected Health Information that is Genetic Information about an individual for underwriting purposes shall not be a permitted use or disclosure. The term "underwriting purposes" includes determining eligibility or benefits, computation of premium or contribution amounts, or the creation, renewal, or replacement of a contract of health insurance.

(b) Employment-Related Actions. Use or disclosure of Protected Health Information for the purpose of employment-related actions or decisions shall not be a permitted use or disclosure.

(c) Other Benefits. Use or disclosure of Protected Health Information in connection with any other benefit or employee benefit plan of the Employer, except as expressly permitted in Section 9.4, shall not be a permitted use or disclosure.

9.6 Permitted Uses and Disclosures

Responsible Employees may access, request, receive, use, disclose, create, and/or transmit PHI only to perform certain permitted and required functions on behalf of the Health FSA, consistent with the Privacy Policy. This includes:

- (a) uses and disclosures for the Health FSA's own Payment and Health Care Operations functions;
- (b) uses and disclosures for another HIPAA Health Plan's Payment and Health Care Operations functions;
- (c) disclosures to a health care provider, as defined under 45 CFR § 160.103, for the health care provider's treatment activities;
- (d) disclosures to the Employer, acting in its role as Plan sponsor, of (1) summary health information for purposes of obtaining health insurance coverage or premium bids for HIPAA Health Plans or for making decisions to modify, amend, or terminate a HIPAA Health Plan; or (2) enrollment or disenrollment information;
- (e) disclosures of a Participant's, Spouse's, or Dependent's PHI to the Participant or the Dependent or his or her personal representative, as defined under 45 CFR § 164.502(g);
- (f) disclosures to a Participant's, Spouse's, or Dependent's family members or friends involved in the Participant's, Spouse's, or Dependent's health care or payment for the Participant's, Spouse's, or Dependent's health care, or to notify a Participant's, Spouse's, or Dependent's family in the event of an emergency or disaster relief situation;
- (g) uses and disclosures to comply with workers' compensation laws;
- (h) uses and disclosures for legal and law-enforcement purposes, such as to comply with a court order;
- (i) disclosures to the Secretary of Health and Human Services to demonstrate the Health FSA's compliance with the Privacy Rule, Security Rule, or Breach Notification Rule;
- (j) uses and disclosures for other governmental purposes, such as for national security

purposes;

(k) uses and disclosures for certain health and safety purposes, such as to prevent or lessen a threat to public health, to report suspected cases of abuse, neglect, or domestic violence, or relating to a claim for public benefits or services;

(l) uses and disclosures to identify a decedent or cause of death, or for tissue-donation purposes;

(m) uses and disclosures required by other applicable laws; and

(n) uses and disclosures pursuant to the Participant's authorization that satisfies the requirements of 45 CFR § 164.508.

9.7 Certification Requirement

The Health FSA shall disclose PHI, including Electronic PHI, to Responsible Employees only upon receipt of a certification by the Employer that the Employer agrees:

(a) not to use or further disclose PHI other than as permitted or required by this Article and the Privacy Policy or as required by law;

(b) to take reasonable steps to ensure that any agents to whom the Employer provides PHI or Electronic PHI received from the Health FSA agree: (1) to the same restrictions and conditions that apply to the Employer with respect to such PHI; and (2) to implement reasonable and appropriate security measures to protect such Electronic PHI;

(c) not to use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer other than another Health Plan;

(d) to report to the Health FSA any use or disclosure of PHI, including Electronic PHI, that is inconsistent with the uses or disclosures described in Section 9.6, or any Security Incident, of which the Employer becomes aware;

(e) to make available PHI for inspection and copying in accordance with 45 CFR § 164.524;

(f) to make available PHI for amendment, and to incorporate any amendments to PHI, in accordance with 45 CFR § 164.526;

(g) to make available PHI required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(h) to make its internal practices, books, and records relating to the use and disclosure of PHI and Electronic PHI, received on behalf of the Health FSA, available to the Secretary of Health and Human Services for purposes of determining compliance by the Health FSA with the Privacy Rule, the Breach Notification Rule, or the Security Rule;

(i) if feasible, to return or destroy all PHI and Electronic PHI received from the Health FSA that the Employer still maintains in any form and retain no copies of such PHI and Electronic PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of PHI and Electronic PHI infeasible;

(j) to take reasonable steps to ensure that there is adequate separation between the Health FSA and the Employer's activities in its role as Health FSA sponsor and employer, and that such adequate separation is supported by reasonable and appropriate security measures; and

(k) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that the Employer creates, receives, maintains, or transmits on behalf of the FSA.

9.8 Mitigation. In the event of noncompliance with any of the provisions set forth in this Article:

(a) The HIPAA privacy officer or security official, as appropriate, shall address any complaint promptly and confidentially. The HIPAA privacy officer or security official, as appropriate, first will investigate the complaint and document the investigation efforts and findings.

(b) If PHI, including Electronic PHI, has been used or disclosed in violation of the Privacy Policy or inconsistent with this Article, the HIPAA privacy officer and/or the security official, as appropriate, shall take immediate steps to mitigate any harm caused by the violation and to minimize the possibility that such a violation will recur.

(c) If a Responsible Employee or other Employer employee is found to have violated the Privacy Policy and/or policy developed under the Security Rule, such personnel shall be subject to disciplinary action, up to and including termination.

9.9 Breach Notification. Following the discovery of any Breach of unsecured PHI, the Health FSA shall notify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of a Breach, in accordance with 45 CFR § 164.404, and shall notify the Secretary of Health and Human Services in accordance with 45 CFR § 164.408. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified in regulations or other guidance issued by the Secretary of Health and Human Services.

ARTICLE X. Group Term Life Insurance Benefit

10.1 Group Term Life Insurance Benefits. Employer may elect to offer group term life insurance under Code § 79 and its regulations, covering the life of the Employee Participant only (and not an employee's spouse or Dependent). Such benefit may not provide a permanent benefit that extends beyond one policy year. Group Term Life Insurance Plans may be provided under a policy carried indirectly by the Employer in the instances where the Employer provides life insurance to a group of employees under individual contracts which

meet the requirements of Code § 79 and its regulations.

10.2 Maximum Limitation. The maximum limitation will be established in the Life Insurance Benefit Plan or applicable collective bargaining agreement or other Employer contract or policy. However, only the cost of coverage offering up to \$50,000 in Group Term Life Insurance Benefit coverage may be taken pre-tax. Any cost of coverage in excess of \$50,000 in Group Term Life Insurance Benefits will be includible in an employee's gross income.

ARTICLE XI. Irrevocability of Elections; Exceptions

11.1 Irrevocability of Elections. A Participant's election under the Plan, including its Components, is irrevocable for the duration of the Period of Coverage to which it relates, except as provided in this Article XI. In other words, unless an exception applies, the Participant may not change any elections for the duration of the Period of Coverage regarding:

- (a) participation in this Plan;
- (b) Salary Reduction amounts; or
- (c) election of particular Benefit Package Options.

11.2 Procedure for Making New Election If Exception to Irrevocability Applies

(a) Timeframe for Making New Election. A Participant (or an Eligible Employee who, when first eligible under Section 3.1 or during the Open Enrollment Period under Section 4.2, declined to be a Participant) may make a new election within 30 days of the occurrence of an event described in Section 11.3 (or within 60 days of the occurrence of an event described in Section 11.3(e)(3) or (4)), as applicable, but only if the election under the new Election Form/Salary Reduction Agreement is made on account of and is consistent with the event. Notwithstanding the foregoing, a Change in Status that results in a beneficiary becoming ineligible for coverage under the Medical Insurance Plan shall automatically result in a corresponding election change, whether or not

requested by the Participant within the normal 30-day period.

(b) Effective Date of New Election. Elections made pursuant to this Section 11.2 shall be effective for the balance of the Period of Coverage following the change of election unless a subsequent event allows for a further election change. Except as provided in Section 11.3(e) for HIPAA special enrollment rights in the event of birth, adoption, or placement for adoption, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the next calendar month following the date that the election change request was filed, but, as determined by the Plan Administrator, election changes may become effective later to the extent that any replacement coverage commences later).

(c) Effect of New Election Upon Amount of Benefits. For the effect of a changed election upon the maximum and minimum benefits under the Health FSA and Dependent Care FSA Components, see Sections 7.4 and 8.4 respectively.

11.3 Events Permitting Exception to Irrevocability Rule for All Benefits. A Participant may change an election as described below upon the occurrence of the stated events for the applicable component of this Plan in accordance with the procedures described in Section 11.2.

(a) Open Enrollment Period (Applies to Premium Payment, Health FSA, and Dependent Care FSA Benefits). A Participant may change an election during the Open Enrollment Period in accordance with Section 4.2.

(b) Termination of Employment (Applies to Premium Payment, Health FSA, and Dependent Care FSA Benefits). A Participant's election will terminate under the Plan upon termination of employment in accordance with Sections 3.3 and 3.4, as applicable.

(c) Leaves of Absence (Applies to Premium Payment, Health FSA, and Dependent Care

FSA Benefits). A Participant may change an election under the Plan upon FMLA leave in accordance with Section 3.4 and upon non-FMLA leave in accordance with Section 3.5.

(d) Change in Status (Applies to Premium Payment Benefits, Health FSA Benefits as Limited Below, Dependent Care FSA Benefits as Limited Below, and Group Term Life Insurance Benefits as Limited Below). A Participant may change his or her election under the Plan upon the occurrence of a Change in Status event only if the election is consistent with the event under both the applicable special consistency rules and the general consistency rule. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, shall determine, based on prevailing IRS guidance, whether a requested election change meets the consistency requirements below.

General Consistency Rule: A Participant's election change satisfies the general consistency requirement only if the election change is made on account of and corresponds with a Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer.

Special Consistency Rules: Assuming that the general consistency rule is also satisfied, a requested election change must satisfy the following specific consistency requirements in order for a Participant to be able to alter his or her election based on the specified Change in Status:

1. Loss of Spouse or Dependent Eligibility; Special COBRA Rules. For a Change in Status involving a Participant's divorce, annulment, or legal separation from a Spouse, the death of a Spouse or a Dependent, or a Dependent's ceasing to satisfy the eligibility requirements for coverage, a Participant may only elect to cancel Medical Insurance Benefits for the Spouse or Dependent, as applicable. However, if the Participant or his or her Spouse or Dependent

becomes eligible for COBRA because of a reduction of hours or because the Participant's Dependent ceases to satisfy the eligibility requirements for coverage (and the Participant remains a Participant under this Plan in accordance with Section 3.2), then the Participant may increase his or her election to pay for such coverage.

2. **Gain of Coverage Eligibility Under Another Employer's Plan.** For a Change in Status in which a Participant or his or her Spouse or Dependent gains eligibility for coverage under another employer's cafeteria plan or qualified benefit plan as a result of a change in marital or employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the other employer's plan. The Plan Administrator may rely on a Participant's certification that the Participant has obtained or will obtain coverage under the Spouse's or Dependent's employer's plan, unless the Plan Administrator has reason to believe that the Participant's certification is incorrect.
3. **Special Consistency Rule for Dependent Care FSA Benefits.** With respect to the Dependent Care FSA Benefits, a Participant may change or terminate his or her election upon a Change in Status if the election change is on account of and corresponds with a Change in Status that affects eligibility of Dependent Care Expenses for the tax exclusion under Code § 129.

Special Rule for Health FSA Coverage: A Participant may not change his or her election to reduce Health FSA coverage during a Period of Coverage. However, a participant may cancel Health FSA coverage completely due to any of the following events: death of a Spouse, divorce, legal separation, or annulment;

death of a Dependent; change in employment status such that the Participant becomes ineligible for Health FSA coverage; or a Dependent's ceasing to satisfy eligibility requirements for Health FSA coverage. Any such cancellation will not become effective to the extent that it would reduce future contributions to the Health FSA to a point where the total contributions for the Plan Year are less than the amount already reimbursed for the Plan Year.

Special Rule for Group Term Life Insurance Benefits: A Participant may increase or decrease his or her election in response to a Change in Status regardless of whether the event impacts eligibility under the Group Term Life Insurance Plan

(e) HIPAA Special Enrollment Rights (Applies Only to Premium Payment Benefits for the Medical Insurance Plan). If a Participant or his or her Spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code § 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election (including, when required by HIPAA, an election to enroll in another benefit package under a group health plan), provided that the election change corresponds with such HIPAA special enrollment rights. As required by HIPAA, a special enrollment right will arise in the following circumstances:

- (1) a Participant or his or her Spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because: (A) the coverage was provided under COBRA, and the COBRA coverage was exhausted; or (B) the coverage was non-COBRA coverage, and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated;
- (2) a new Dependent is acquired as a result of marriage, birth, adoption, or

placement for adoption;

(3) the Participant's or Dependent's coverage under a Medicaid plan or state children's health insurance program is terminated as a result of loss of eligibility for such coverage; or

(4) the Participant or Dependent becomes eligible for a state premium assistance subsidy from a Medicaid plan or through a state children's health insurance program with respect to coverage under the group health plan.

An election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right. An election change on account of a HIPAA special enrollment attributable to the birth, adoption, or placement for adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days).

(f) *Certain Judgments, Decrees, and Orders (Applies to Premium Payment and Health FSA Benefits, but Not to Dependent Care FSA Benefits)*. If a judgment, decree, or order (collectively, an "Order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a QMCSO) requires accident or health coverage (including an election for Health FSA Benefits) for a Participant's child (including a foster child who is a Dependent of the Participant), then a Participant may (1) change his or her election to provide coverage for the child if the Order requires the Participant to provide coverage; or (2) change his or her election to revoke coverage for the child if the Order requires that another individual provide coverage under that individual's plan, and such coverage is actually provided.

(g) *Medicare and Medicaid (Applies to Premium Payment Benefits, to Health FSA Benefits as Limited Below, but Not to Dependent Care FSA Benefits)*. If a Participant or

his or her Spouse or Dependent who is enrolled in a health or accident plan under this Plan becomes entitled to or enrolled in Medicare or Medicaid, then the Participant may prospectively reduce or cancel the health or accident coverage of the person becoming entitled to Medicare or Medicaid and/or the Participant's Health FSA coverage may be canceled or reduced. Such cancellation or reduction will not become effective to the extent that it would reduce future contributions to the Health FSA to a point where the total contributions for the Plan Year are less than the amount already reimbursed for the Plan Year. Furthermore, if a Participant or his or her Spouse or Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then the Participant may prospectively elect to commence or increase the Medical Insurance Benefit of the individual who loses Medicare or Medicaid eligibility and/or the Participant's Health FSA coverage.

(h) Change in Cost (Applies to Premium Payment Benefits, to Dependent Care FSA Benefits as Limited Below, but Not to Health FSA Benefits). For purposes of this Section 11.3(h), "similar coverage" means coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide major medical coverage are considered to be similar coverage. For purposes of this definition, (1) a health FSA is not similar coverage with respect to an accident or health plan that is not a health FSA; (2) an HMO and a PPO are considered to be similar coverage; and (3) coverage by another employer, such as a Spouse's or Dependent's employer, may be treated as similar coverage if it otherwise meets the requirements of similar coverage.

(1) *Increase or Decrease for Insignificant Cost Changes.* Participants are required to increase their elective contributions (by increasing Salary Reductions) to reflect insignificant increases in their required contribution for their Benefit Package

Option(s), and to decrease their elective contributions to reflect insignificant decreases in their required contribution. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease is insignificant based upon all the surrounding facts and circumstances, including but not limited to the dollar amount or percentage of the cost change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this increase or decrease in affected employees' elective contributions on a prospective basis.

(2) *Significant Cost Increases.* If the Plan Administrator determines that the cost charged to an Employee of a Participant's Benefit Package Option(s) (such as the PPO for the Medical Insurance Plan) significantly increases during a Period of Coverage, then the Participant may (a) make a corresponding prospective increase in his or her elective contributions (by increasing Salary Reductions); (b) revoke his or her election for that coverage, and in lieu thereof, receive on a prospective basis coverage under another Benefit Package Option that provides similar coverage (such as an HMO, but not the Health FSA); or (c) drop coverage prospectively if there is no other Benefit Package Option available that provides similar coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost increase is significant in accordance with prevailing IRS guidance.

(3) *Significant Cost Decreases.* If the Plan Administrator determines that the cost of any Benefit Package Option (such as a PPO) significantly decreases during a Period of Coverage, then the Plan Administrator may permit the following election changes: (a) Participants enrolled in that Benefit Package Option may make a corresponding prospective decrease in their elective contributions (by decreasing Salary

Reductions); (b) Participants who are enrolled in another Benefit Package Option (such as an HMO, but not the Health FSA) may change their election on a prospective basis to elect the Benefit Package Option that has decreased in cost (such as the PPO for the Medical Insurance Plan); or (c) Employees who are otherwise eligible under Section 3.1 may elect the Benefit Package Option that has decreased in cost (such as the PPO) on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost decrease is significant in accordance with prevailing IRS guidance.

(4) *Limitation on Change in Cost Provisions for Dependent Care FSA Benefits.* The above "Change in Cost" provisions (Sections 11.3(h)(1) through 11.3(h)(3)) apply to Dependent Care FSA Benefits only if the cost change is imposed by a dependent care provider who is not a "relative" of the Employee. For this purpose, a relative is an individual who is related as described in Code §§ 152(d)(2)(A) through (G), incorporating the rules of Code §§ 152(f)(1) and 152(f)(4).

(i) *Change in Coverage (Applies to Premium Payment and Dependent Care FSA Benefits, but Not to Health FSA Benefits).*

The definition of "similar coverage" under Section 11.3(h) applies also to this Section 11.3(i).

(1) *Significant Curtailment.* If coverage is "significantly curtailed" (as defined below), Participants may elect coverage under another Benefit Package Option that provides similar coverage. In addition, as set forth below, if the coverage curtailment results in a "Loss of Coverage" (as defined below), then Participants may drop coverage if no similar coverage is offered by the Employer. The Plan Administrator in its sole discretion, on a uniform and consistent basis, will decide, in accordance with

prevailing IRS guidance, whether a curtailment is "significant," and whether a Loss of Coverage has occurred.

(a) *Significant Curtailment Without Loss of Coverage.* If the Plan Administrator determines that a Participant's coverage under a Benefit Package Option under this Plan (or the Participant's Spouse's or Dependent's coverage under his or her employer's plan) is significantly curtailed without a Loss of Coverage (for example, when there is a significant increase in the deductible, the co-pay, or the out-of-pocket cost-sharing limit under an accident or health plan, such as the PPO under the Medical Insurance Plan) during a Period of Coverage, the Participant may revoke his or her election for the affected coverage, and in lieu thereof, prospectively elect coverage under another Benefit Package Option that provides similar coverage (such as the HMO, but not the Health FSA). Coverage under a plan is deemed to be "significantly curtailed" only if there is an overall reduction in coverage provided under the plan so as to constitute reduced coverage generally.

(b) *Significant Curtailment With a Loss of Coverage.* If the Plan Administrator determines that a Participant's Benefit Package Option coverage under this Plan (or the Participant's Spouse's or Dependent's coverage under his or her employer's plan) is significantly curtailed, and if such curtailment results in a Loss of Coverage during a Period of Coverage, then the Participant may revoke his or her election for the affected coverage and may either prospectively elect coverage under another Benefit Package Option that provides similar coverage or drop coverage if no other Benefit Package Option providing similar coverage is offered by the Employer.

(c) *Definition of Loss of Coverage.* For purposes of this Section 11.3(i)(1), a "Loss

of Coverage" means a complete loss of coverage, including the elimination of a Benefit Package Option, an HMO ceasing to be available where the Participant or his or her Spouse or Dependent resides, or a Participant or his or her Spouse or Dependent losing all coverage under the Benefit Package Option by reason of an overall lifetime or annual limitation. In addition, the Plan Administrator, in its sole discretion, on a uniform and consistent basis, may treat the following as a Loss of Coverage:

- a substantial decrease in the medical care providers available under the Benefit Package Option;
- a reduction in benefits for a specific type of medical condition or treatment with respect to which the Participant or his or her Spouse or Dependent is currently in a course of treatment; or
- any other similar fundamental loss of coverage.

(d) *Dependent Care FSA Coverage Changes.* A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care service provider. For example: (a) if the Participant terminates one dependent care service provider and hires a new dependent care service provider, then the Participant may change coverage to reflect the cost of the new service provider; and (b) if the Participant terminates a dependent care service provider because a relative becomes available to take care of the child at no charge, then the Participant may cancel coverage.

(2) *Addition or Significant Improvement of a Benefit Package Option.* If during a Period of Coverage the Plan adds a new Benefit Package Option or significantly improves an existing Benefit Package Option, the Plan Administrator may permit the following election changes: (a) Participants who are enrolled in a Benefit Package

Option other than the newly added or significantly improved Benefit Package Option may change their elections on a prospective basis to elect the newly added or significantly improved Benefit Package Option; and (b) Employees who are otherwise eligible under Section 3.1 may elect the newly added or significantly improved Benefit Package Option on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether there has been an addition of, or a significant improvement in, a Benefit Package Option in accordance with prevailing IRS guidance.

(3) *Loss of Coverage Under Other Group Health Coverage.* A Participant may prospectively change his or her election to add group health coverage for the Participant or his or her Spouse or Dependent, if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including (but not limited to) the following: a state children's health insurance program under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in Code § 7701(a)(40)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable Benefit Package Option(s).

(4) *Change in Coverage Under Another Employer Plan.* A Participant may make a prospective election change that is on account of and corresponds with a change made under an employer plan (including a plan of the Employer or a plan of the Spouse's or Dependent's employer), so long as (a) the other cafeteria plan or qualified benefits plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or (b) the Plan permits

Participants to make an election for a Period of Coverage that is different from the plan year under the other cafeteria plan or qualified benefits plan. For example, if an election is made by the Participant's Spouse during his or her employer's open enrollment to drop coverage, the Participant may add coverage to replace the dropped coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a requested change is on account of and corresponds with a change made under the other employer plan, in accordance with prevailing IRS guidance.

(j) Change in Coverage Applies Only to Premium Payment Benefits for the Medical Insurance Plan).

A Participant who was reasonably expected to average 30 hours of service or more per week and experiences an employment status change such that he or she is reasonably expected to average less than 30 hours of service per week may prospectively revoke his or her election for Medical Insurance Plan coverage, provided that the Participant certifies that he or she and any related individuals whose coverage is being revoked have enrolled or intend to enroll in another plan providing minimum essential coverage under health care reform for coverage that is effective no later than the first day of the second month following the month that includes the date the Medical Insurance Plan coverage is revoked.

(k) Exchange Enrollment (Applies Only to Premium Payment Benefits for the Medical Insurance Plan).

A Participant who is eligible to enroll for coverage in a government-sponsored Exchange (Marketplace) during an Exchange special or annual open enrollment period may prospectively revoke his or her election for Medical Insurance Plan coverage, provided

that the Participant certifies that he or she and any related individuals whose coverage is being revoked have enrolled or intend to enroll in new Exchange coverage that is effective no later than the day immediately following the last day of the Medical Insurance Plan coverage.

1011.4 Election Modifications Required by Plan Administrator. The Plan Administrator may, at any time, require any Participant or class of Participants to amend the amount of their Salary Reductions for a Period of Coverage if the Plan Administrator determines that such action is necessary or advisable in order to (a) satisfy any of the Code's nondiscrimination requirements applicable to this Plan or other cafeteria plan; (b) prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of benefits hereunder than would otherwise be recognized; (c) maintain the qualified status of benefits received under this Plan; or (d) satisfy Code nondiscrimination requirements or other limitations applicable to the Employer's qualified plans. In the event that contributions need to be reduced for a class of Participants, the Plan Administrator will reduce the Salary Reduction amounts for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction amount and continuing with the Participant in the class who had elected the next-highest Salary Reduction amount, and so forth, until the defect is corrected.

ARTICLE XII. Appeals Procedure

12.1 Procedure If Benefits Are Denied Under This Plan. If a claim for benefits under this Plan is wholly or partially denied, then the Employee or Participant may request review upon written application to the Committee. The appeal must be made in writing within 180 days after the Employee or Participant's receipt of the notice that the claim was denied. If the Employee or Participant does not appeal on time, the Employee or Participant will lose the right to appeal the denial and the right to file suit in court. Appeals under this Plan, including

the Health FSA and Dependent Care FSA Components, will be reviewed and decided by the Committee or other entity designated in the Plan in a reasonable time not later than 60 days after the Committee receives the request for review. The Committee may, in its discretion, hold a hearing on the denied claim.

12.2 Claims Procedures for Medical, Vision, Dental, and Group Term Life Insurance Benefits.

Claims and reimbursement for Medical, Vision, Dental, and Group Term Life Insurance Benefits shall be administered, respectively, in accordance with the claims procedures for the Medical, Vision, Dental, and Group Term Life Insurance Benefits, respectively, as set forth in the plan documents and/or summary plan description for each of those Plans, respectively, if applicable.

12.3 Claims Deadline. Unless otherwise provided herein or required pursuant to applicable law, a claim for benefits under this Plan must be made within one year after the date the expense was incurred that gives rise to the claim. It is the responsibility of the Employee or his or her designee to make sure this requirement is met.

12.4 Limitations Period for Filing Suit

Unless otherwise provided herein or required pursuant to applicable law, a suit for benefits under this Plan must be brought within one year after the date of a final decision on the claim in accordance with the applicable claims procedure.

ARTICLE XIII. Recordkeeping and Administration

13.1 Plan Administrator. The administration of this Plan shall be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

13.2 Powers of the Plan Administrator. The Plan Administrator shall have such duties and

powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following discretionary authority:

- (a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan (provided that the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 12.1);
- (b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;
- (c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Plan Administrator determines to be appropriate;
- (d) to request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- (e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide benefits under this Plan;
- (f) to receive, review, and keep on file such reports and information regarding the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;

(g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;

(h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;

(i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim; and

(j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

13.3 Reliance on Participant, Tables, etc. The Plan Administrator may rely upon the direction, information, or election of a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Plan Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions, and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Plan Administrator.

13.4 Provision for Third-Party Plan Service Providers. The Plan Administrator, subject to approval of the Employer, may employ the services of such persons as it may deem necessary or desirable in connection with the operation of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

13.5 Fiduciary Liability. To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

13.6 Insurance Contracts. The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any benefits under the Plan;

and (b) to replace any of such insurance companies or contracts. Any dividends, retroactive rate adjustments, or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of and be retained by the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

13.7 Inability to Locate Payee. If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.

13.8 Effect of Mistake. In the event of a mistake as to the eligibility or participation of an Employee, the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Plan Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code § 125 or the regulations issued thereunder, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the account or distributions to which he or she is properly entitled under the Plan. Such action by the Plan Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

ARTICLE XIV. General Provisions

14.1 Expenses. All reasonable expenses incurred in administering the Plan are currently paid by forfeitures to the extent provided in Section 5.5, Section 7.6 with respect to Health FSA Benefits and Section 8.6 with respect to Dependent Care FSA Benefits, and then by the

Employer.

14.2 No Contract of Employment. Nothing herein contained is intended to be construed as an employment contract or other arrangement between any Employee and the Employer and shall not be construed to imply that Employee will be employed for any specific period of time.

14.3 Amendment and Termination. This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan (including any Benefit Component) at any time for any reason by resolution of the Employer's governing body or by any person or persons authorized by the governing body to take such action.

14.4 Governing Law/Venue. This Plan shall be construed, administered, and enforced according to the laws of the State of California, to the extent not superseded by the Code or any other federal law. Any claim or action resulting from, relating to, or arising under The Plan shall only be brought in the South County Morgan Hill Courthouse, County of Santa Clara, California, and such Court shall have personal jurisdiction over any party named in the action.

14.5 Compliance With Code and Other Applicable Laws. It is intended that this Plan meet all applicable requirements of the Code and of all regulations issued thereunder. This Plan shall be construed, operated, and administered accordingly, and in the event of any conflict between this Plan and the Code, the provisions of the Code shall be deemed controlling, and any conflicting provision of this Plan shall be deemed superseded to the extent of the conflict. In addition, the Plan will comply with the requirements of all other applicable laws.

14.6 No Guarantee of Tax Consequences. Neither the Plan Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state, or local income tax purposes. It shall be the obligation of each Participant to determine

whether each payment under this Plan is excludable from the Participant's gross income for federal, state, and local income tax purposes and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.

14.7 Indemnification of Employer. If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis and if such payments do not qualify for such treatment under the Code, then such Participant shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

14.8 Non-Assignability of Rights. The right of any Participant to receive reimbursement under this Plan shall not be assigned by the Participant and shall not be subject to claims by the Participant's creditors. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

14.9 Plan Provisions Controlling. In the event that the terms or provisions of any summary or description of this Plan conflict with the provisions of this Plan, the provisions of this Plan shall control.

14.10 Severability. If any part of this Plan is invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent permitted by law.

This document is executed this ____ day of _____. Year _____.

CITY OF MORGAN HILL

By: _____

Its: _____

Appendix A

Exclusions

Medical Expenses That Are Not Reimbursable From the Health FSA

The City of Morgan Hill Section 125 Flexible Benefits Plan document contains the general rules governing what expenses are reimbursable. This Appendix A, as referenced in the Plan document, specifies certain expenses that are excluded under this Plan with respect to reimbursement from the Health FSA—that is, expenses that *are not reimbursable*, even if they meet the definition of "medical care" under Code § 213(d) and may otherwise be reimbursable under the regulations governing Health FSAs.

Exclusions: *The following expenses are not reimbursable from the Health FSA*, even if they meet the definition of "medical care" under Code § 213(d) and may otherwise be reimbursable under legal requirements applicable to health FSAs:

- Premiums for other health coverage, including but not limited to premiums for any other plan (whether or not sponsored by the Employer).
- Long-term care services.
- Cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. "Cosmetic surgery" means any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.
- The salary expense of a nurse to care for a healthy newborn at home.
- Funeral and burial expenses.
- Household and domestic help (even if recommended by a qualified physician due to an Employee's or Dependent's inability to perform physical housework).
- Custodial care.
- Medicines or drugs (other than insulin) available over-the-counter that have not been prescribed.
- Costs for sending a child to a special school for benefits that the child may receive from the course of study and disciplinary methods.
- Social activities, such as dance lessons (even if recommended by a physician for general health improvement).
- Bottled water.

- Cosmetics, toiletries, toothpaste, etc.
- Uniforms or special clothing, such as maternity clothing.
- Automobile insurance premiums.
- Transportation expenses of any kind, except transportation expenses to receive medical care.
- Marijuana and other controlled substances that are in violation of federal laws, even if prescribed by a physician.
- Any item that does not constitute "medical care" as defined under Code § 213(d).
- Any item that is not reimbursable due to the rules in Prop. Treas. Reg. § 1.125-5(k)(4) or other applicable law or regulations.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Michael Horta, Senior Human Resources Analyst
APPROVED BY: City Manager

ADOPT THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULE EFFECTIVE DECEMBER 29, 2019

RECOMMENDATION(S)

Adopt the Management, Professional, and Confidential Employees Resolution and corresponding salary schedule effective December 29, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Annually, the City Council considers revisions to the City's existing Management, Professional, and Confidential Employees Resolution based on recommendations from the City Manager and after budget adoption. On June 5, 2019, the City Council adopted the Fiscal Year (FY) 2019-20 Mid-Cycle Budget amendments. The total compensation package offered Management, Professional, and Confidential employees is competitive with that of other local government employers in this region.

A summary of the components of the recommended Resolution are provided below:

- **Base Salary Increases** – All employees covered by the Resolution will receive a 3.5% base salary increase effective December 29, 2019.
- **Update of Severance Allowance** – A severance allowance, not to exceed six months' salary (previously three months' salary), is recommended for the executive classification (Assistant City Manager, Chief of Police, and Public Services Director) of the Group 1-A.
- **Employee Paid Share of the Employer California Public Employees' Retirement System (CalPERS) Contribution for FY 2019-2020** – The FY 2019-20 CalPERS employee contribution obligation was revised to reflect a precise contribution amount (i.e. rate of 11.604% instead of 11.6%).

- **Health Care Contributions** – The City’s health care contribution to the medical and dental plans for 2020 include the following:
 1. For employees with family coverage, up to \$1,976/month.
 2. For employee with employee plus one coverage, up to \$1,508/month.
 3. For employees with employee only coverage, up to \$800/month.

COMMUNITY ENGAGEMENT: Inform

Staff will post the approved Resolution and salary schedules on the Human Resources page as is the City’s practice for labor contracts and salary information.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve the recommended salary increase and/or the City’s health care contributions for 2020 and/or recommend a different salary adjustment or different amount for the City’s health care contributions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 5, 2019, Council approved the Management, Professional, and Confidential Employees Resolution (No. 19-035), effective June 30, 2019.

FISCAL AND RESOURCE IMPACT:

As indicated above, there will be a 3.5% base salary increase for all positions covered by the Management, Professional, and Confidential Employees Resolution, effective December 29, 2019 and this increase, as well as the City’s health care contribution to the medical and dental plans for 2020 was included in the adopted FY 2019-20 budget.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

1. Draft 2019-20 Mgmt Prof Conf Reso (eff 12.29.20)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADJUSTING THE SALARY SCHEDULE FOR MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES (THIS RESOLUTION RESCINDS RESOLUTION NO. 19-035)

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

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

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

SECTION 1 - SALARY RANGES

- A. Effective December 30, 2018, base salaries for Groups 1-A, 1-B, 1-C, and 1-D increased by 3.5%.
See Current Salary Schedule attached as **Exhibit A**.
- B. Effective December 29, 2019, base salaries for Groups 1-A, 1-B, 1-C, and 1-D, increase by 3.5%.
See Salary Schedule attached as **Exhibit B**.
- C. Groups 1-A, 1-B, 1-C, and 1-D base salary ranges include the employee PERS contribution which is deducted from payroll (See SECTION 3, E-H.)

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

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

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

1. The City Manager shall establish an allowance amount, not to exceed six months' salary, which is determined to be in the best interest of the city for the following executive classifications of the Group 1-A:

Assistant City Manager for Administrative Services*
Assistant City Manager for Development Services
Chief of Police
Public Services Director

**Currently Unfunded Position*

2. The City Manager shall establish an allowance amount, not to exceed three months' salary, which is determined to be in the best interest of the City for the remaining classifications of the Group 1-A.
 3. This severance allowance is in addition to any unused vacation or administrative leave pay unused at the time of separation.
- B. Each Department Director will recommend to the City Manager the proposed monthly salary to be paid to each of the employees whose classification appears in Group 1-B, 1-C, and 1-D. Upon approval of the City Manager, the monthly salary will be set within the prescribed range for each classification. The City Manager has the authority to increase the monthly compensation for employees in Group 1-B, 1-C, and 1-D, by a maximum of 10% within the prescribed range each fiscal year based on each individual employee's performance.
- C. The City will contribute to a City-sponsored IRS 457 deferred compensation program of the employee's choice (ICMA or MassMutual) according to the following schedule:
1. 1% of base salary per pay period for employees who have been employed with the City from four to eight years.
 2. 2% of base salary per pay period for employees who have been employed with the City for over eight years.
- D. When it is proposed by the Personnel Officer that a new classification be created or an existing classification be changed, the City Manager shall submit justification for approval of that action to the City Council and if that action is approved, the City Manager will have the authority to approve new and revised job descriptions.

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

- A. For "Classic Members" as defined by the Public Employees' Pension Reform Act of 2013 (PEPRA) and in the CalPERS retirement system:
1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive

CalPERS retirement benefits under the 2.5% at age 55 plan.

2. Safety (sworn) employees listed in Groups 1-A and 1-B, will receive CalPERS retirement benefits under the 3% at age 50 plan.

B. For "New Members" as defined by PEPRA and in the CalPERS retirement system:

1. Non-Safety (miscellaneous) employees listed in Groups 1-A, 1-B, 1-C, and 1-D will receive CalPERS retirement benefits under the 2.0% at 62 plan.
2. Safety (sworn) employees listed in Groups 1-A and 1-B will receive CalPERS retirement benefits under the 2.7% at age 57 plan.

C. CalPERS defines a "New Member" as:

1. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who has no prior membership in any other California public retirement system.
2. A new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who is not eligible for reciprocity with another California public retirement system.
3. A member who established CalPERS membership prior to January 1, 2013, and who is hired by a different CalPERS employer after January 1, 2013, after a break in service of greater than six months.
4. CalPERS refers to all members that do not fit the definition of a "new member" as a "classic member."

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

E. The Miscellaneous "Classic Members" shall contribute, in addition to the "Classic Members" rate of 8.0%, an additional 3.604% towards the "Classic Members" CalPERS contribution rate for FY 2019-20. The total "Classic Members" employee contribution obligation shall be 11.604%.

F. The Miscellaneous "New Members" shall contribute, in addition to the "New Members" rate of 6.25%, an additional 3.604% towards the "New Members" CalPERS contribution rate for FY 2019-20. The total "New Members" employee contribution obligation shall be 9.854%.

G. Safety (sworn) PEPRA employees: Beginning with CalPERS rates effective July 1, 2013, at which time the City's employer contribution PEPRA rate was 11.5%, the City and

Association agreed that, beginning with CalPERS PEPRA rates effective July 1, 2013, safety (sworn) PEPRA employees would not pay less than 11.50% and would split future increases to the City's employer PEPRA contribution rates, including both the normal cost and any unfunded actuarial liability at a 50/50 ratio. For example, the City's employer CalPERS safety PEPRA obligation was 12.114% in FY 16-17 with the PEPRA employees' obligation was at 11.50%. Therefore, City paid half of the 0.614% increase over the base year City's employer PEPRA cost of 11.50% (equal to 0.307%) and safety PEPRA employees paid the other half (also equal to 0.307%). This methodology has been used in each year subsequent to FY 2016-17 and will be used in future years should CalPERS increase the City's employer Safety PEPRA contribution rates. The Safety PEPRA employees CalPERS contributions rate for 2019-20 shall be 13.329% (12.00% employee + 1.329% of the employer share).

- H. Safety (sworn) Classic employees: Beginning December 30, 2018, the City and Safety (sworn) Management, Professional, and Confidential employees agreed, in addition to employee CalPERS rate of 9.0%, a 6.12% towards the employer's share of pension costs (i.e. the total safety (Sworn) employee contribution for FY 2019-20 shall be 15.12% (9.00% employee + 6.12% of the employer share). The total employee contribution shall remain at 15.12% for the Safety (sworn) classic employees during the term of the Morgan Hill Police Officers' Association Memorandum of Understanding (MOU), which is December 30, 2018 – December 31, 2021.
- I. As soon as administratively feasible, pursuant to Government code section 20516, the City shall amend its contract with CalPERS to convert the additional employee contribution to the employee share.

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

- A. The City will contribute to the City's medical and dental plans as follows:
 1. For employees with family coverage, up to \$1,900/month in 2019 and up to \$1,976/month in 2020.
 2. For employees with employee plus one coverage, up to \$1,500/month in 2019 and up to \$1,508/month in 2020.
 3. For employees with employee only coverage, up to \$800/month in 2019 and up to \$800/month in 2020.
 4. Employees enrolling in City health but not using the maximum amount available from the City for their premium category (employee only, employee + 1, employee + family) shall not be entitled to the surplus. Employees enrolling in plans whose cost exceeds the maximum amount available from the City for their premium category shall have the difference deducted on a pre-tax basis from their paycheck.
 5. Employees who waive medical coverage and annually provide proof of alternate medical coverage shall be entitled to a taxable health in lieu payment of six hundred ten dollars (\$610) per month.
 6. If an employee waives medical and elects dental coverage, the employee will receive

- the taxable health in lieu payment of six hundred ten dollars (\$610) per month but will pay the appropriate dental premium.
7. The City will implement a cafeteria plan in or before October 2019 consistent with paragraphs 1 - 6 above.
- B. The City will continue to provide coverage under the Concern Employee Assistance Program.
- C. The City will continue to offer an IRS Section 125 program.

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

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

A. Holidays

1. The City will grant the following paid holidays to employees:

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

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

Two floating holidays which must be used during the fiscal year.

2. Holidays are paid at a rate of eight hours of time off; employees on alternate work schedules must use additional leave balances to receive full pay on a holiday.
 3. With the approval of the employee's supervisor, employees may "float" holidays to another day within the same fiscal year provided they work on the holiday.
- B. **Sick Leave Accrual**
1. Sick Leave credit for employees will be accumulated on the basis of eight hours of sick leave per month (96 hours per year).

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

C. Vacation Leave Accrual

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

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

1. Employees listed in Groups 1-A, 1-B, and 1-C receive and may use up to 72 hours of administrative leave with pay per fiscal year.
2. Administrative leave time for employees in Groups 1-A, 1-B, and 1-C will be available for one additional year if not used in the fiscal year that it was initially available. If, however, the administrative leave time that was carried over to the following fiscal year is not used during the second year, it will be lost at the end of the second fiscal year. In effect, the maximum amount of administrative leave time that may be available to an employee at any given time is 144 hours.
3. Effective July 1, 2016, new employees who are hired during any month other than July, will initially receive prorated administrative leave hours of six (6) hours per month depending on date of hire and the hours will be banked at time of hire (i.e. employees

hired in the month of August would receive 66 hours of administrative leave because they will be working a total of eleven (11) months in the fiscal year). All regular, full-time employees will receive 72 hours of administrative leave each fiscal year following their hire date. Part-time employees have prorated benefits and their total administrative leave hours will be prorated based on their position allocation.

E. Leave Cash Out

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

F. Bereavement Leave

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

Special circumstances beyond this definition may be considered on a case-by-case basis and must be approved by the City Manager. This leave will not affect the twenty-five percent cash out of sick leave for the same calendar year.

G. Professional Development

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

1. Tuition Reimbursement Program

Employees are eligible to receive tuition reimbursement of up to \$1,500 per fiscal year for the cost of books and tuition for classes or courses beneficial to the employee's career development. All classes must be approved in advance by the Department Director or City Manager. Reimbursement will take place upon a successful completion or passing of the course.

2. **Membership Dues**

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

H. **Life and Disability Insurance**

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

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

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

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

2. Short-term disability coverage for employees shall be at the maximum rate of \$1,384 per week based on 66⅔% of the actual weekly salary after an eight-day elimination period.
3. Long-term disability coverage for employees shall be at the maximum rate of \$6,000 per month based on 66⅔% of the actual monthly salary after a 60-day elimination period.

I. **Retirement Medical Plan**

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

J. **Special Assignment Pay**

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

Assignment Pay shall be discontinued on the date originally identified for completion of the assignment, unless an extension of specific duration is approved by the City Manager or designee prior to the end of the original assignment end date. This pay will not be considered additional compensation as defined by the California Public Employees' Retirement Systems (CalPERS).

K. Employee Uniform Allowance

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

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

L. Work Schedule

The City Manager will establish the standard work schedule for employees. Based on the needs of the City, the City Manager may at his/her discretion, change the work schedules of employees at any time.

M. Auto Allowance

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

N. Cell Phone Allowance

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

SECTION 6 - EFFECTIVE DATE

This resolution shall be effective June 30, 2019. Compensation shall be made available to only those employees covered by this section who are still employed as a Management, Professional, or Confidential employee with the City as of the effective date of this agreement. As of the effective date of this Resolution, Resolution No. 19-035 shall be superseded and rescinded.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the September 4, 2019 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at the meeting held on September 4, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE GROUP SALARY SCHEDULE

Adopted: June 5, 2019

Effective: June 30, 2019

* Currently Unfunded Positions

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
<i>Assistant City Manager for Administrative Services *</i>	\$13,942	\$18,320
<i>Assistant City Manager for Development Services</i>	\$13,942	\$18,320
<i>Chief of Police</i>	\$13,942	\$18,320
<i>Public Services Director</i>	\$13,942	\$18,320
<i>Community Services Director *</i>	\$13,281	\$17,488
<i>Development Services Director</i>	\$13,281	\$17,488
<i>Economic Development Director</i>	\$13,281	\$17,488
<i>Engineering and Utilities Director *</i>	\$13,281	\$17,488
<i>Finance Director</i>	\$13,281	\$17,488
<i>Communications and Engagement Director</i>	\$11,460	\$15,059
<i>Human Resources Director</i>	\$11,460	\$15,059
<i>Information Technology Director</i>	\$11,460	\$15,059
Group 1-B: Middle Management		
<i>Police Captain</i>	\$11,687	\$15,356
<i>Building Official</i>	\$11,460	\$15,059
<i>Deputy Director for Engineering</i>	\$11,460	\$15,059
<i>Deputy Director for Utilities Services</i>	\$11,460	\$15,059
<i>Housing Manager</i>	\$11,460	\$15,059
<i>Planning Manager *</i>	\$11,460	\$15,059
<i>Program Administrator</i>	\$11,460	\$15,059
<i>Assistant City Attorney</i>	\$10,738	\$14,086
<i>Assistant to the City Manager</i>	\$10,738	\$14,086
<i>Economic Development Manager</i>	\$10,131	\$13,289
<i>Principal Planner</i>	\$10,131	\$13,289
<i>Senior Civil Engineer</i>	\$10,131	\$13,289
<i>Senior Project Manager</i>	\$10,131	\$13,289
<i>Budget Manager</i>	\$9,368	\$12,321
<i>Building Manager *</i>	\$9,368	\$12,321
<i>Communications and Engagement Manager *</i>	\$9,368	\$12,321
<i>Community Services Manager *</i>	\$9,368	\$12,321
<i>Information Services Manager *</i>	\$9,368	\$12,321
<i>Maintenance Manager</i>	\$9,368	\$12,321
<i>Police Support Services Manager</i>	\$9,368	\$12,321
<i>Recreation Manager</i>	\$9,368	\$12,321
<i>Supervising Civil Engineer</i>	\$9,368	\$12,321
<i>Utility Systems Manager</i>	\$9,368	\$12,321
<i>Accounting Manager *</i>	\$8,720	\$11,462
<i>Financial and Policy Analyst</i>	\$8,720	\$11,462
<i>Senior Planner</i>	\$8,720	\$11,462
<i>Community Services Supervisor</i>	\$7,900	\$10,080
<i>Council Services and Records Manager</i>	\$7,900	\$10,080
<i>Deputy City Attorney *</i>	\$7,900	\$10,080
<i>Economic Development Coordinator *</i>	\$7,900	\$10,080
<i>Emergency Services Coordinator</i>	\$7,900	\$10,080
<i>GIS / Land Use Data Administrator</i>	\$7,900	\$10,080
<i>Maintenance Services Coordinator</i>	\$7,900	\$10,080
<i>Older Adult Services Supervisor</i>	\$7,900	\$10,080
<i>Programmer Analyst</i>	\$7,900	\$10,080
<i>Senior Human Resources Analyst</i>	\$7,900	\$10,080
<i>Risk Management Analyst (.50 FTE)</i>	\$3,766	\$4,941
Group 1-C: Confidential Exempt		
<i>Administrative Analyst</i>	\$7,530	\$9,881
<i>Legal Specialist</i>	\$6,775	\$8,914
Group 1-D: Confidential Non-Exempt		
<i>Accounting Technician</i>	\$6,007	\$7,883
<i>Human Resources Technician</i>	\$6,007	\$7,883
<i>Human Resources Assistant *</i>	\$4,704	\$6,154

EXHIBIT B

CITY OF MORGAN HILL MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEE SALARY SCHEDULE

Adopted: September 4, 2019

Effective: December 29, 2019

* Currently Unfunded Positions

Job Classification	Bottom of Range Monthly	Top of Range Monthly
Group 1-A: Executive Management		
<i>Assistant City Manager for Administrative Services *</i>	\$14,430	\$18,961
Assistant City Manager for Development Services	\$14,430	\$18,961
Chief of Police	\$14,430	\$18,961
Public Services Director	\$14,430	\$18,961
<i>Community Services Director *</i>	\$13,746	\$18,100
Development Services Director	\$13,746	\$18,100
Economic Development Director	\$13,746	\$18,100
<i>Engineering and Utilities Director *</i>	\$13,746	\$18,100
Finance Director	\$13,746	\$18,100
Communications and Engagment Director	\$11,861	\$15,586
Human Resources Director	\$11,861	\$15,586
Information Technology Director	\$11,861	\$15,586
Group 1-B: Middle Management		
Police Captain	\$12,096	\$15,893
Building Official	\$11,861	\$15,586
Deputy Director for Engineering	\$11,861	\$15,586
Deputy Director for Utilities Services	\$11,861	\$15,586
Housing Manager	\$11,861	\$15,586
<i>Planning Manager *</i>	\$11,861	\$15,586
Program Administrator	\$11,861	\$15,586
Assistant City Attorney	\$11,114	\$14,579
Assistant to the City Manager	\$11,114	\$14,579
Economic Development Manager	\$10,486	\$13,754
Principal Planner	\$10,486	\$13,754
Senior Civil Engineer	\$10,486	\$13,754
Senior Project Manager	\$10,486	\$13,754
Budget Manager	\$9,696	\$12,752
<i>Building Manager *</i>	\$9,696	\$12,752
<i>Communications and Engagement Manager *</i>	\$9,696	\$12,752
<i>Community Services Manager *</i>	\$9,696	\$12,752
<i>Information Services Manager *</i>	\$9,696	\$12,752
Maintenance Manager	\$9,696	\$12,752
Police Support Services Manager	\$9,696	\$12,752
Recreation Manager	\$9,696	\$12,752
Supervising Civil Engineer	\$9,696	\$12,752
Utility Systems Manager	\$9,696	\$12,752
<i>Accounting Manager *</i>	\$9,025	\$11,863
Financial and Policy Analyst	\$9,025	\$11,863
Senior Planner	\$9,025	\$11,863
Community Services Supervisor	\$8,177	\$10,433
Council Services and Records Manager	\$8,177	\$10,433
<i>Deputy City Attorney *</i>	\$8,177	\$10,433
<i>Economic Development Coordinator *</i>	\$8,177	\$10,433
Emergency Services Coordinator	\$8,177	\$10,433
GIS / Land Use Data Administrator	\$8,177	\$10,433
Maintenance Services Coordinator	\$8,177	\$10,433
Older Adult Services Supervisor	\$8,177	\$10,433
Programmer Analyst	\$8,177	\$10,433
Senior Human Resources Analyst	\$8,177	\$10,433
Risk Management Analyst (.50 FTE)	\$3,898	\$5,114
Group 1-C: Confidential Exempt		
Administrative Analyst	\$7,794	\$10,227
Legal Specialist	\$7,012	\$9,226
Group 1-D: Confidential Non-Exempt		
Accounting Technician	\$6,217	\$8,159
Human Resources Technician	\$6,217	\$8,159
<i>Human Resources Assistant *</i>	\$4,869	\$6,369



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: William Wells, Intern

APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING APPLICATION FOR PER CAPITA PROP 68 GRANT FUNDING

RECOMMENDATION(S)

Adopt resolution authorizing a grant agreement with the State of California.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Supporting Our Youth

Seniors

and Entire Community

GUIDING DOCUMENTS

Bikeways

Trails

Parks and Recreation Masterplan

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to consider adopting the resolution for Proposition 68 per capita grant funding application. The per capita funding will be awarded to all cities and counties as long as they commit to use the funding for eligible projects. It is estimated that Morgan Hill should receive approximately \$200,000 in funding.

Proposition 68 per capita funds are available for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis. Grant recipients are encouraged to utilize awards to rehabilitate existing infrastructure and to address deficiencies in neighborhoods lacking access to the outdoors.

The City intends to apply for funds with the most likely project being the replacement of the restroom facility at Galvan Park. The installation of a new restroom, similar to the one at the Railroad Park, will replace an aging piece of infrastructure with new infrastructure that will help to reduce operational costs.

Moving forward on the grant funding requires submission of a completed application and approval of a resolution from the Council (Attachment 1).

COMMUNITY ENGAGEMENT: Inform

Investing in existing assets while carefully planning for future growth and promoting financial stability for operation of City facilities are two actions included in the City's Bikeways, Trails, Parks and Recreation Master Plan the City developed with substantial community engagement. Given the City's limited resources, City staff are recommending funds be used to replace existing aging infrastructure. If the project is approved, the City will inform the community about the new facility prior to its installation and promote its availability once the project is complete.

ALTERNATIVE ACTIONS:

The Council could elect not to adopt the resolution and the City would not receive the grant funding. The Council may also want to provide staff with further direction on the use of funds.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has taken several actions as it relates to grants for park funding, but this specific grant has not been the subject of prior Council or Commission action.

FISCAL AND RESOURCE IMPACT:

Adopting this resolution will enable the City to obtain approximately \$200,000 in funding from the State of California for park renovation projects. If awarded, the funds likely won't be available and ready to expend until next fiscal year. Staff will include the anticipated revenue and related expenditure through the upcoming biennial budget development process.

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. Per Capita Grant Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF CITY OF MORGAN HILL APPROVING APPLICATION(S) FOR PER CAPITA GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and

WHEREAS, the grantee will enter into a contract with the State of California to complete project(s);

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill hereby:

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the City of Morgan Hill's general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the City of Morgan Hill will consider a range of actions that include, but are not limited to, the following:
 - (A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
 - (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.

(C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.

(D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.

(E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.

(F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.

(G) Identifying possible staff liaisons to diverse populations.

8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).
10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
11. Delegates the authority to the City Manager, or designee, to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and
12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 4th day of September 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 September 4, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Per Capita Grant Resolution (2451 : Per Capita Prop 68 Funding)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Hilary Holeman, Administrative Analyst
APPROVED BY: City Manager

RATIFY CITY POSITION ON PENDING LEGISLATION SB 266 PUBLIC EMPLOYEES' RETIREMENT SYSTEM: DISALLOWED COMPENSATION: BENEFIT ADJUSTMENTS

RECOMMENDATION(S)

1. Receive legislative correspondence in opposition of SB 266 Public Employees' Retirement System: disallowed compensation: benefit adjustments; and
2. Ratify City's position.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship
Regional Initiatives

REPORT NARRATIVE:

Per Resolution No. 6851 (Attachment No. 1), the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State legislation is timely and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position on pending legislation as long as the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy. When this occurs, a written report to the City Council for comment and acceptance is required at the next possible meeting.

On July 9, 2019, the League of California Cities called attention to SB 266 requesting cities take opposition quickly as it was moving rapidly through Legislature.

SB 266 Public Employees' Retirement System: disallowed compensation: benefit adjustments

Bill Text (Attachment No. 2)

SB 266 as currently drafted, requires a public agency to pay directly from its General Fund any shortfall of a benefit should CalPERS determine that a retiree or their beneficiary has received disallowed compensation. Additionally, the measure would

permit the retiree to determine if they would like to receive one lump sum of the projected amortized amount of the benefit or force the agency to pay a monthly annuity from its General Fund. The legislation would have a significant fiscal impact to local government agencies, amongst other legal concerns. As drafted, it is viewed CalPERS would have no responsibility and no incentive to properly calculate benefit payments.

The City submitted letter of opposition (Attachment No. 3) electronically via the California Legislature Advocates Portal.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the position and letters that the City sent regarding SB 266.

ALTERNATIVE ACTIONS:

Council could rescind positions taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time. Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - Proposals for legislation to be enacted by the State Legislature.

LINKS/ATTACHMENTS:

1. Resolution 6851
2. SB 266 PERS.disallowed compensation.Bill Text
3. SB 266 PERS.disallowed compensation.Letter of Opposition

RESOLUTION NO. 6851

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE LEGISLATION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED

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 indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report entitled "City Position on Pending State Legislation" submitted for City Council consideration at its meeting of April 16, 2014, 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 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 prefers, whenever possible, that determinations on whether to take a position on pending State legislation be brought before

the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State legislation that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

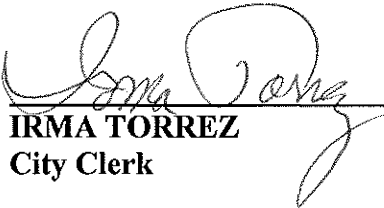
- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State legislation that may have impacts upon City when all of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending State legislation or the City has otherwise become aware of such pending State legislation; and
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending State legislation is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending State legislation; and
 - iii. The pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending State legislation.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending State legislation pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending State legislation and the comment or position transmitted.

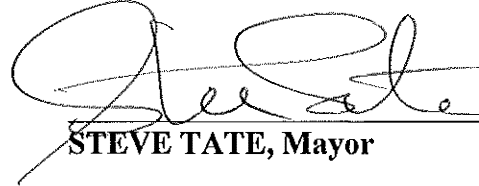
Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 16th day of April, 2014 by the following vote:

AYES: **COUNCIL MEMBERS:** Rich Constantine, Marilyn Librers, Gordon Siebert, Steve Tate
NOES: **COUNCIL MEMBERS:** None
ABSTAIN: **COUNCIL MEMBERS:** None
ABSENT: **COUNCIL MEMBERS:** Larry Carr

ATTEST:


 IRMA TORREZ
 City Clerk

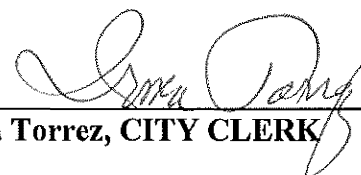

 STEVE TATE, Mayor

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 6851, adopted by the City Council at the meeting held on April 16, 2014.

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

DATE: 4/21/2014


 Irma Torrez, CITY CLERK

Attachment: Resolution 6851 (2449 : City Positions on Pending Legislation SB 266 Disallowed Compensation)

AMENDED IN ASSEMBLY AUGUST 14, 2019

AMENDED IN ASSEMBLY JUNE 17, 2019

AMENDED IN SENATE MAY 17, 2019

SENATE BILL

No. 266

Introduced by Senator Leyva

February 12, 2019

An act to add Section 20164.5 to the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 266, as amended, Leyva. Public Employees' Retirement System: disallowed compensation: benefit adjustments.

(1) Existing law, the Public Employees' Retirement Law (PERL), establishes the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL authorizes a public agency to contract to make its employees members of PERS and prescribes a process for this. PERS is administered by its board of administration, which is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

This bill would establish new procedures under PERL for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPPRA and other specified laws and thus impermissible under PERL. The bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation. The bill would require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that the state, school employer, or contracting agency return to the member any contributions paid by the member or on the member's behalf.

With respect to retired members, survivors, or beneficiaries whose benefits are based on disallowed final compensation, the bill would require PERS to adjust the benefit to reflect the exclusion of the disallowed compensation, and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer entity that reported the disallowed compensation. Additionally, if specified conditions are met, the bill would require the employing entity to refund overpayment costs to the system and to pay *retired* members, survivors, and beneficiaries whose benefits have been reduced ~~a lump sum or an annuity reflecting an annuity, or a lump sum, as prescribed, that reflects~~ the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided. The bill would require the system to provide certain notices in this regard. This bill would require the system to provide confidential contact information of retired members, and their survivors and beneficiaries, who are affected by these provisions to the relevant employing entities, the confidentiality of which the entities would be required to maintain.

The bill would authorize the state, a school employer, or a contracting agency, as applicable, to submit to the system an additional compensation item proposed to be included or contained in a memorandum of understanding or collective bargaining agreement on

and after January 1, 2020, that is intended to form the basis of a pension benefit calculation ~~for determination of compliance in order for PERS to review its consistency with PEPPRA and other laws, as specified, and would require PERS to respond provide guidance regarding the review within 90 days, as specified. The bill would require PERS to publish notices identifying items of allowable compensation derived from regarding proposed compensation language submitted to the system for review.~~ review and the guidance given by the system that is connected with it. The bill would make related legislative findings and declarations.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The California Public Employees' Retirement
- 2 System (CalPERS) is the largest public pension fund in the United
- 3 States, administering defined benefit retirement plans for
- 4 California's public employees, including state and local
- 5 government firefighters, law enforcement personnel, and school
- 6 employees.
- 7 (b) Of the numerous positions maintained by the state, schools,
- 8 and local governments, each is unique and each is vital to ensuring
- 9 quality public services that help keep our state strong, a critical
- 10 component to promoting our state's continued economic recovery
- 11 and future growth.
- 12 (c) Fire service, law enforcement, school personnel, and other
- 13 public employees exhibit varying demographic features and career
- 14 patterns. Each requires a different skill set and knowledge base,
- 15 as well as unique requirements for recruitment, training, retention,
- 16 and compensation.
- 17 (d) Generations of hard-working members of California's middle
- 18 class have dedicated their careers to public service, often earning
- 19 less over the course of their careers when compared to their private

1 industry counterparts, to earn and pay for the promise of a secure
2 retirement.

3 (e) A public employee's pension is based on collectively
4 bargained compensation that takes the form of base pay and special
5 compensation for additional skills, extraordinary assignments, or
6 education.

7 (f) For CalPERS, it is the employer's responsibility to ensure
8 that employee information is reported to CalPERS accurately and
9 on a timely basis in order to correctly calculate an employee's
10 service credit and final compensation for retirement purposes.

11 (g) In 2012, after serving the public for nearly 30 years, a
12 firefighter employed by a CalPERS contracting agency, which
13 provided an official projection of retirement benefits based on the
14 firefighter's estimated retirement date, made the decision to retire
15 based on that projection.

16 (h) In 2017, five years after officially retiring, CalPERS notified
17 the firefighter retiree that the retiree's former employer had
18 erroneously reported and remitted contributions on certain
19 compensation, which CalPERS later determined in an audit was
20 not pensionable compensation. CalPERS sought repayment of the
21 purported overpayment directly from the retired firefighter totaling
22 thousands of dollars, as well as imposed a substantial future
23 reduction to the retiree's monthly allowance. Unfortunately, this
24 scenario is not isolated to just this one retiree. A handful of other
25 firefighter, law enforcement, and school retirees have reported
26 similar stories across multiple CalPERS employers.

27 (i) For over eight decades, CalPERS has proven its ability to
28 fairly administer the retirement system to uphold the promises
29 made by its employers for those members who invest their life's
30 work in public service. However, this kind of clawback has the
31 potential to take a major toll on the finances of retirees, including
32 firefighters and law enforcement officers who, unlike private sector
33 employees, do not receive social security benefits and instead rely
34 on their fixed monthly pension as their sole source of retirement
35 income.

36 (j) In enacting this bill, it is the intent of the Legislature to ensure
37 that a retired CalPERS member is protected when alleged
38 misapplication or calculation of compensation occurs as a result
39 of an employer's error, and that this protection be provided to
40 retirees whose appeal of CalPERS' determination, and subsequent

1 reduction of the retiree's allowance, is not final. It is further the
2 intent of the Legislature that errors made on the part of the
3 employer, with respect to a promise to a retiree, be borne by the
4 employer rather than through a retroactive clawback and permanent
5 reduction in the retired member's pension.

6 SEC. 2. Section 20164.5 is added to the Government Code, to
7 read:

8 20164.5. (a) For purposes of this section, "disallowed
9 compensation" means compensation reported for a member by the
10 state, school employer, or a contracting agency that the system
11 subsequently determines is not in compliance with the California
12 Public Employees' Pension Reform Act of 2013 (Article 4
13 (commencing with Section 7522) of Chapter 21 of Division 7 of
14 Title 1), Section 20636 or 20636.1, or the administrative regulations
15 of the system.

16 (b) If the system determines that the compensation reported for
17 a member by the state, school employer, or a contracting agency
18 is disallowed compensation, the system shall require the state,
19 school employer, or contracting agency to discontinue reporting
20 the disallowed compensation. This section shall also apply to
21 determinations made on or after January 1, 2017, if an appeal has
22 been filed and the member, *the retired member*, survivor, or
23 beneficiary has not exhausted their administrative or legal
24 remedies.

25 (1) In the case of an active member, all contributions made on
26 the disallowed compensation shall be credited against future
27 contributions to the benefit of the state, school employer, or
28 contracting agency that reported the disallowed compensation, and
29 any contribution paid by, or on behalf of, the member, including
30 contributions under Section 20691, shall be returned to the member
31 by the state, school employer, or contracting agency that reported
32 the disallowed compensation.

33 (2) In the case of a retired member, survivor, or beneficiary
34 whose final compensation at the time of retirement was predicated
35 upon the disallowed compensation, the contributions made on the
36 disallowed compensation shall be credited against future
37 contributions, to the benefit of the state, school employer, or
38 contracting agency that reported the disallowed compensation and
39 the system shall permanently adjust the benefit of the affected

1 retired member, survivor, or beneficiary to reflect the exclusion
2 of the disallowed compensation.

3 (3) (A) In the case of a retired member, survivor, or beneficiary
4 whose final compensation at the time of retirement was predicated
5 upon the disallowed compensation as described in paragraph (2),
6 the repayment and notice requirements described in this paragraph
7 and paragraph (4) shall apply only if all of the following conditions
8 are met:

9 (i) The compensation was reported to the system and
10 contributions were made on that compensation while the member
11 was actively employed.

12 (ii) The compensation was provided for in a memorandum of
13 understanding or collective bargaining agreement as compensation
14 for pension purposes.

15 (iii) The determination by the system that compensation was
16 disallowed was made after the date of retirement.

17 (iv) The member was not aware that the compensation was
18 disallowed at the time it was reported.

19 (B) If the conditions of subparagraph (A) are met, the state,
20 school employer, or contracting agency that reported contributions
21 on the disallowed compensation shall do both of the following:

22 (i) Pay to the system, as a direct payment, the full cost of any
23 overpayment of the prior paid benefit made to an affected retired
24 member, survivor, or beneficiary resulting from the disallowed
25 compensation.

26 (ii) Pay to the retired member, survivor, or beneficiary, as a
27 lump sum or as an annuity based on that amount, the actuarial
28 equivalent present value representing the difference between the
29 monthly allowance that was based on the disallowed compensation
30 and the adjusted monthly allowance calculated pursuant to
31 paragraph (2) for the duration that allowance is projected to be
32 paid by the system to the retired member, survivor, or beneficiary.
33 The payment, or payments, shall be made by the state, school
34 employer, or contracting agency that reported contributions on the
35 disallowed compensation ~~in the option selected by~~ *as an annuity*
36 ~~unless the retired member, survivor, or beneficiary pursuant to a~~
37 ~~settlement or agreement between the parties. and the state, school~~
38 ~~employer, or contracting agency, as may be applicable, mutually~~
39 ~~agree to a lump sum payment or payments.~~

(4) The system shall provide a notice to the state, school employer, or contracting agency that reported contributions on the disallowed compensation and to the affected retired member, survivor, or beneficiary, including, at a minimum, all of the following:

(A) The amount of the overpayment to be paid by the state, school employer, or contracting agency to the system as described in subparagraph (B) of paragraph (3).

(B) The actuarial equivalent present value owed to the retired member, survivor, or beneficiary as described in subparagraph (B) of paragraph (3), if applicable.

(C) Written disclosure of the state, school employer, or contracting agency's obligations to the retired ~~member~~ *member, survivor, or beneficiary* pursuant to this section.

(5) The system shall, upon request, provide the state, a school employer, or a contracting agency with contact information data in its possession of a relevant retired member, survivor, or beneficiary in order for the state, a school employer, or a contracting agency to fulfill their obligations to that retired member, survivor, or beneficiary pursuant to this section. The recipient of this contact information data shall keep it confidential.

(c) (1) The state, a school employer, or a contracting agency, as applicable, may submit to the system for review an additional compensation item that is proposed to be included, or is contained, in a memorandum of understanding adopted, or a collective bargaining agreement entered into, on and after January 1, 2020, that is intended to form the basis of a pension benefit calculation, in order for the system to ~~determine compliance~~ *review consistency of the proposal* with the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), Section 20636 or 20636.1, and the administrative regulations of the system.

(2) A submission to the system for review under paragraph (1) shall include only the proposed compensation item language and a description of how it meets the criteria listed in subdivision (a) of Section 571 or subdivision (b) of Section 571.1 of Title 2 of the California Code of Regulations, along with any other supporting documents or requirements the system deems necessary to ~~evaluate compliance with the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter~~

~~21 of Division 7 of Title 1), Section 20636 or 20636.1, and the administrative regulations of the system. complete its review.~~

(3) The system shall ~~respond to~~ *provide guidance regarding* the submission within 90 days of the receipt of all information required to make a ~~determination. review.~~

(d) The system shall periodically publish a notice of the proposed compensation language submitted to the system pursuant to paragraph (c) for review and the ~~system's determination of compliance.~~ *guidance provided by the system.*

(e) This section does not alter or abrogate any responsibility of the state, a school employer, or a contracting agency to meet and confer in good faith with the employee organization regarding the impact of the disallowed compensation or the effect of any disallowed compensation on the rights of the employees and the obligations of the employer to its employees, including any employees who, due to the passage of time and promotion, may have become exempt from inclusion in a bargaining unit, but whose benefit was the product of collective bargaining.

(f) *This section does not effect or otherwise alter a party's right to appeal any determination regarding disallowed compensation made by the system.*

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 20164.5 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to appropriately maintain the current confidentiality of personal contact information held by the Public Employees' Retirement System regarding retired members of the system, and their survivors and beneficiaries, it is necessary to limit access to this information if it is provided to other public entities for purposes of Section 20164.5 of the Government Code.

O



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Morgan Hill, CA 95037-4128
TEL: (408) 779-7271
FAX: (408) 779-3117
www.morganhill.ca.gov

August 13, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Appropriations Committee
State Capitol Building, Room 2114
Sacramento, CA 95814

RE: **SB 266 (Leyva) Public Employees' Retirement System: disallowed compensation: benefit adjustments.**
Notice of Opposition

Dear Assembly Member Gonzalez,

The City of Morgan Hill must respectfully oppose SB 266, which would require public agencies to directly pay retirees for disallowed retirement benefits.

In 2012 the California State Legislature passed significant public pension reform legislation known as the Public Employees' Pension Reform Act (PEPRA,) which took effect January 1, 2013. While the reforms were significant, they led to some confusion as to what may lawfully be offered as employee pension benefits. As a result, some public agencies and their represented employee organizations came to agreements on benefit packages and submitted to CalPERS for approval. Only after these agreements were approved and administered did CalPERS determine that these forms of compensation were unlawful. Those future retirement benefits, which were being paid for by employers and employees into pension systems such as the California Public Employees Retirement System (CalPERS), were at some point determined to violate the law and were terminated. Terminated benefits that violate PEPRA are considered "disallowed benefits."

The legislation takes away established employee and employer due process rights to appeal CalPERS' decision denying reported compensation. Section 20164.5 (a) sets forth the definition of "disallowed compensation" and establishes that it is only CalPERS that determines whether the compensation is in compliance with PEPRA, Section 20636 or 20636.1, or the administrative regulations of the system. Section 20164.5 (b) provides that "if the system determines that the compensation . . . is disallowed compensation, the system shall require the state, school employer, or contracting agency to discontinue reporting the disallowed compensation." Present law provides an employee and employer the right to appeal CalPERS' decision denying reported compensation. [Gov. Code § 20134 and 2 CCR §§ 555-555.4] The present legislation makes no reference to existing law that allows an employee or employer to appeal the decision. By not referencing the appeal rights and triggering adverse consequences immediately after CalPERS' "determines that the compensation . . . is disallowed compensation," the present CalPERS sponsored legislation radically deviates from the existing statutory and regulatory structure. As presently written, the "retroactivity provision" contained in Section 20164.5 CalPERS' legislation can reach back to January 1, 2017. An employee and employer who could have submitted an appeal and even had an appeal heard by the Office of Administrative Hearings but had not completely "exhausted their administrative or legal remedies" will be subject to the present legislation. The general rule is that legislation should be applied prospectively except when there is an exceptional need to have it retroactively applied. Here, by retroactively applying the legislation, CalPERS forces employee and employer to forfeit all existing appeals under this draft legislation. CalPERS' attempt to change the law on employees and local governments after they have filed their appeals violates the principles of substantive due process and the Constitutional prohibition against Ex Post Facto Laws by increasing a civil penalty or punishment on acts already done. [U.S. Const. Art 1, Section 9, Clause 3]

Under current law, once a benefit is determined to be disallowed, both the employer and the employee cease making future payments on that benefit, past contributions from the employee are returned to the employee,

while past contributions from the employer are applied towards future payment. Unfortunately, in the case of a retiree that received the disallowed benefit, the pension system must recoup the overpaid benefit from the retiree. The pension system must recoup that overpayment from the retiree because it is unlawful to pay out a benefit that is not legally allowable or earned.

SB 266 adds uncertainty to employee compensation, and creates an unreasonable risk to taxpayer funds. Again, it is unfortunate that after an agency and their bargaining unit came to an agreement on benefits, and those benefits had been paid for any amount of time, for the benefit to be taken from the retiree. Public agencies simply cannot be required to make payments directly to a retiree for an unlawful benefit.

For these reasons, the City of Morgan Hill opposes SB 266 (Leyva).

Sincerely,



Christina Turner
City Manager

cc. Senator Connie Leyva (fax: 916-651-4920)
Assembly Member Robert Rivas (fax: 916-319-2130)
Senator Bill Monning (fax: 916-651-4917)
Seth Miller, Regional Public Affairs Manager, League of California Cities, smiller@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org

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, July 17, 2019 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The public hearing regarding **Development Agreement DA2018-0001: Old Monterey - Kelly Vo**, that was publicly noticed for consideration by the City Council at this meeting has been continued to date uncertain.

TELECONFERENCE

Council Member Martinez Beltran participated in the meeting via teleconference as follows:

The Westgate Hotel
 Business Center
 1055 2nd Ave
 San Diego, CA 92101

Public comment from the teleconference location was allowed.

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 6:00 p.m. for the purpose of conducting a workshop.

SPECIAL MEETING

6:00 P.M.

Minutes Acceptance: Minutes of Jul 17, 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	Present	
Yvonne Martinez Beltran	Council Member	Remote	
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.

WORKSHOP

The Purpose of this workshop is to:

- Share California High Speed Rail Authority (CHSRA) staff - recommended State's Preferred Alternative and process for identifying the State's Preferred Alternative;
- Provide Council Members with the opportunity to discuss the CHSRA staff recommendation; and
- Collect Council feedback on the CHSRA staff-recommended State's Preferred Alternative.

PRESENTATION AND HANDOUTS

WORKSHOP SUPPLEMENT

WORKSHOP- UPDATED PRESENTATION

Council Member Carr excused himself from the dais.

City Manager Christina Turner introduced the item. Borris Lipkin with the High Speed Rail Authority provided the presentation.

The public comment was opened at 7:05 p.m. The following people were called to speak:

Diane Holmes

Dick Oliver

Roland Lebrun

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

Economic Development Director Edith Ramirez concluded the presentation.

The special meeting adjourned at 7:37 p.m.

REGULAR MEETING

7:00 P.M.

Minutes Acceptance: Minutes of Jul 17, 2019 6:00 PM (CONSENT CALENDAR)

Council Member Carr resumed his seat at the dais.

The regular meeting was called to order at 7:43 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC PRESENTATION - ASSET #27- EQUALITY AND SOCIAL JUSTICE

CITY COUNCIL REPORTS

Mayor Pro Tem Spring shared that he misses the days when friends could talk to each other about politics without the ugliness. He shared what it was like for him growing up in Switzerland and his thoughts on separating children from their families. He encouraged the community to not remain silent and to speak up.

CITY MANAGER'S REPORT

City Manager Christina Turner mentioned the evening's supplements and presentations.

She announced that on July 26th, next Friday, the City will hold its Annual City Council Mid-Year Goal Review Workshop where they will review and discuss the Council's priorities and staff workplans and provide project updates. She shared that the workshop is open to the public and she encouraged community members to attend or tune in through the City's website or Channel 17.

She then announced that the following day, Saturday, July 27th, the City will hold the second Engage Morgan Hill Community Advisory Group meeting which will focus on the basics of the City's budget. This group is comprised of community leaders who meet monthly to learn more about City operations and services to help develop recommendations to the City Council about how we can remain fiscally sustainable. She invited the community to stay engaged with this initiative by frequently visiting www.engagemorganhill.com or contacting Maureen Tobin.

She concluded by sharing that National Night out will take place on Tuesday, August 6th downtown from 5:30 to 8:00 pm and encouraged the community to attend.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

Council Member Martinez Beltran shared that if community members want to get involved with helping immigrants, there will be trainings coming up and the community can learn more by visiting www.sacredheartcs.org.

She also announced that this year is the 99th anniversary of women earning the right to vote. Women's Equality Day will be on August 26th and there will be many celebrations throughout the community.

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT

The public comment was opened at 8:04 p.m.

Joe Baranowski was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 6, and 8 through 15.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

1. APPROVE FEE WAIVER FOR USE OF THE DOWNTOWN AMPHITHEATER BY THE FORD STORE MORGAN HILL

Recommendation:

Authorize the City Manager to waive facility rental fees of \$512 for use of the Downtown Amphitheater by The Ford Store Morgan Hill.

2. ITEM PULLED FOR DISCUSSION

3. ITEM PULLED FOR DISCUSSION

4. ITEM PULLED FOR DISCUSSION

5. ITEM PULLED FOR DISCUSSION

6. APPROVE SENIOR ACCOUNTANT SALARY RANGE AND AFSCME SALARY SCHEDULE

Recommendation:

1. Approve the Senior Accountant monthly salary range of \$7,220 - \$9,215; and
2. Approve the American Federation of State, County, and Municipal Employees (AFSCME) Salary Schedule.

7. ITEM PULLED FOR DISCUSSION

8. ACCEPT 2018 PAVEMENT RESURFACING PROJECT

Recommendation:

1. Accept as complete, the 2018 Pavement Resurfacing Project, in the final amount of \$1,528,721;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

9. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS – MONTEREY PARQUE – TRACT NO. 10331

Recommendation:

1. Accept the subdivision public improvements for Monterey Parque – Tract No. 10331;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

10. ACCEPT REPORT REGARDING CITY RECREATION PROGRAMS OVERVIEW

Recommendation:

Receive report.

11. ACCEPT MAY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

12. ACCEPT ANNUAL EVALUATION REPORT FOR THE SANTA CLARA COUNTY MULTI-JURISDICTIONAL PROGRAM FOR PUBLIC INFORMATION (PPI) FOR FISCAL YEAR 2018-19 (YEAR 4) RELATING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S NATIONAL FLOOD INSURANCE PROGRAM'S COMMUNITY RATING SYSTEM PROGRAM

Recommendation:

Accept the Annual Evaluation Report for FY 2018-19 (Year 4) of the 2015 Santa Clara County Multi-Jurisdictional Program for Public Information (PPI).

13. AWARD TENNANT AVENUE SEWER MAIN PROJECT

Recommendation:

1. Approve Tennant Avenue Sewer Main Project plans and specifications;
2. Award contract to KJ Woods Construction for the Tennant Avenue Sewer Main Project in the amount of \$2,148,000;
3. Authorize expenditure of construction contingency funds not to exceed \$322,200; and
4. Authorize the City Manager to execute and administer the construction contract with KJ Woods Construction.

14. RATIFY CITY POSITION ON PENDING LEGISLATION: AB 516 AUTHORITY TO REMOVE VEHICLES, SB 13 ACCESSORY DWELLING UNITS, AB 68 LAND USE:

ACCESSORY DWELLING UNITS, AB 1763 PLANNING AND ZONING: DENSITY BONUSES: AFFORDABLE HOUSING, AND SB 592 HOUSING ACCOUNTABILITY ACT

Recommendation:

1. Receive legislative correspondence in opposition of AB 516 Authority to remove vehicles;
2. Receive legislative correspondence in opposition of SB 13 Accessory dwelling units;
3. Receive legislative correspondence in opposition of AB 68 Land use: accessory dwelling units;
4. Receive legislative correspondence in opposition of AB 1763 Planning and zoning: density bonuses: affordable housing;
5. Receive legislative correspondence in opposition of SB 592 Housing Accountability Act; and
6. Ratify City's positions.

15. APPROVE THE JUNE 26, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION

2. APPROVE RESOLUTION AUTHORIZING GRANT APPLICATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE GRANT-RELATED AGREEMENTS AND DOCUMENTS

Recommendation:

Adopt the resolution approving the following actions:

1. Authorizing staff to prepare and submit a Statewide Park Development and Community Revitalization Program Grant Application to the State of California Department of Parks and Recreation for an amount not to exceed \$8,500,000 for the development of the proposed park at Butterfield Boulevard and Monterey Road; and
2. Authorizing the City Manager to negotiate and execute the Statewide Park Development and Community Revitalization Program Grant agreement and other documents, reports, forms, and agreements related to the performance of the identified project.

Program Administrator Anthony Eulo and Public Services Director Chris Ghione provided the report.

The public comment was opened at 8:19 p.m.

Jodi Hall was called to speak.

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

MOTION:

Approving the recommended actions.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

3. APPROVE AGREEMENT WITH AXON FOR BODY WORN CAMERAS

Recommendation:

1. Approve a 5-Year Sales Agreement with AXON for the purchase of body worn cameras, cloud storage, service and maintenance; and
2. Authorize City Manager to execute 5-Year Agreement with AXON for an amount not to exceed \$194,405.

Police Chief David Swing provided the report.

The public comment was opened at 8:25 p.m.

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

MOTION:

Approving the recommended actions.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

4. APPROVE DESIGN SERVICES AGREEMENT FOR WEST LITTLE LLAGAS CREEK TRAIL PROJECT

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Verde Design, Inc. for a not to exceed amount of \$199,895, for design of the West Little Llagas Creek Trail Project.

Senior Project Manager Yat Cho provided the report.

The public comment was opened at 8:29 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:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

5. APPROVE FUNDING AGREEMENT WITH THE BOYS AND GIRLS CLUBS OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a funding agreement with the Boys and Girls Clubs of Silicon Valley for Park Place Apartments youth program services.

Community Services Supervisor Mariah Dabel provided the report.

The public comment was opened at 8:37 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

7. APPROVE PURCHASE OF THREE UNMARKED POLICE VEHICLES

Recommendation:

1. Approve the purchase and build out of three new unmarked replacement vehicles for the Police Department for the not to exceed amount of \$138,212, which includes 10% contingency of \$12,565;
2. Approve repurposing of the existing three unmarked vehicles within the Police Department; and
3. Authorize the City Manager to approve the purchase order with Priority 1 Public Safety Equipment Installation, Inc.

Administrative Sergeant Mario Ramirez answered questions.

The public comment was opened at 8:47 p.m.

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

MOTION:

Approving the recommended actions.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

OTHER BUSINESS

16. RECEIVE REPORT ON PREVENTATIVE GUN VIOLENCE MEASURES AND PROVIDE DIRECTION FOR FIREARMS SAFETY EDUCATION

Recommendation:

1. Accept report regarding preventative gun violence measures the City has implemented; and
2. Provide direction for firearms safety education.

Police Captain Shane Palsgrove offered his condolences to the families of the victims of the Ford Store shooting and presented the report.

The public comment was opened at 9:08 p.m. The following people were called to speak:

Dave Truslow

Brian Wang

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

The City Council accepted the report and provided direction.

RESULT:	ACCEPT REPORT
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The meeting recessed at 9:25 p.m.

The meeting reconvened at 9:31 p.m.

17. ACCEPT DONATION OF AN AMBULANCE TO FIRE AND APPROVE ASSOCIATED REQUIREMENTS TO PLACE IN SERVICE

Recommendation:

1. Accept the donation of an ambulance from Monterey County Regional Fire District;
2. Adopt resolution amending Fiscal Year 2019-20 adopted budget to appropriate \$100,000 from the General Fund and a transfer of \$25,000 from Fire Impact Fund (313) to the General Fund (010), for one-time costs to place the ambulance in service, operate the ambulance and the capability to bill for treatment and transport; and
3. Authorize the City Manager to approve, amend and execute agreements to operate the ambulance within Santa Clara County Emergency Medical Services (EMS) and other agencies that are required to place the ambulance in service for use.

Fire Chief Jake Hess provided the report.

The public comment was opened at 10:26 p.m.

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

MOTION:

Approving the recommended actions.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

18. APPROVE SECOND AMENDMENT TO THE 911 EMERGENCY MEDICAL SERVICES PROVIDER AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND THE COUNTY OF SANTA CLARA TO EXTEND THE TERM OF THE AGREEMENT AND THE USE OF THE MEDICAL PRIORITY DISPATCH SYSTEM

Recommendation:

1. Approve the Second Amendment to the Agreement with the County of Santa Clara Emergency Medical Services Agency relating to providing 911 emergency medical services extending the Agreement for a 36-month period through June 30, 2022;
2. Authorize the City Manager to include ambulance transport services provided by Morgan Hill Fire in the Second Amendment, subject to Council action on Agenda Item #17 - Ambulance Donation; and
3. Authorize the City Manager to execute the agreement.

Fire Chief Jake Hess provided the report.

The public comment was opened at 10:41 p.m.

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

MOTION:

Approving the recommended actions.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring proposed that we look into a responsible construction ordinance.

Council Member Carr requested that we get an update on the Santa Clara Valley Habitat Agency.

Council Member Martinez Beltran would like to review the City's RFP process.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 10:45 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 10:46 p.m.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Pursuant to Government Code Section 54956.9(a)
 Case Name: Patton et al. v. City of Morgan Hill, et al.
 Case Number: Santa Clara County Superior Court Case No. 16-CV-303044
 Number of Cases: One (1)

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Pursuant to Government. Code Section 54956.9(d)(1)
 Case Name: Brandon v. City of Morgan Hill and Innovative Claim Solutions, Inc.
 Case Numbers: Workers' Compensation Claim Nos:
 MHL1800030; MHL1800023, WCAB ADJ11309060; UNASSIGNED

RECONVENE

The meeting reconvened at 10:59 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced that there were no reportable actions.

ADJOURNMENT

There being no further business, the meeting was adjourned at 11:00 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

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

Friday, July 26, 2019 9:00 am

**Council Chamber
 17555 Peak Avenue, Morgan Hill, CA 95037**

MID-YEAR GOAL REVIEW WORKSHOP

A Special Meeting of the City Council was called on Friday, July 26, 2019 at 9:00 a.m. for the Mid-Year Goal Review Workshop.

CALL TO ORDER

Mayor Constantine called the meeting to order at 9:02 a.m.

ROLL CALL ATTENDANCE

Minutes Clerk Gonzalez called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Present	
Yvonne Martinez Beltran	Council Member	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Gonzalez declared the posting of the agenda.

Minutes Acceptance: Minutes of Jul 26, 2019 9:00 AM (CONSENT CALENDAR)

PROCLAMATION

Proclaiming the week of August 24-31, 2019 as Women's Equality Week

PUBLIC COMMENT

Mayor Constantine opened the public comment at 9:08 a.m.

Hearing no requests to speak, the public comment was closed.

MID-YEAR GOAL REVIEW WORKSHOP

1. MID-YEAR GOAL REVIEW WORKSHOP

Recommendation:

1. Review and discuss the 2019-2020 City Council Sustainable Morgan Hill Vision and Priorities;
2. Review City Council Norms and Policies and Procedures: Placement of Items on the Agenda and Matters to be Reconsidered by the City Council (CP 96-01) and Rules for the Conduct of City Council Meetings (CP 97-01);
3. Review and discuss the Strategic Priorities Work Plan, project and other updates, and City Council follow-up items;
4. Receive report on development related revenues and expenditures; and
5. Provide direction on the City's response to the California High Speed Rail Authority staff-recommended preferred alignment.

City Manager Christina Turner facilitated the workshop and gave a presentation.

Mayor Constantine opened the public comment at 10:15 a.m. The following people were called to speak:

Doug Muirhead

Brian Sullivan

Yvonne Randolph

John Horner

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

The meeting recessed at 10:41 a.m.

The meeting resumed at 10:47 a.m.

Mayor Constantine opened the public comment.

Hearing no requests to speak the public comment was closed.

Mayor Constantine opened the public comment at 1:26 p.m. The following people were called to speak:

Brian Sullivan

Doug Muirhead

Kathy Sullivan

Yvonne Randolph

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

Mayor Constantine opened the public comment at 3:47 p.m.

Doug Muirhead was called to speak.

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

Council Member Carr excused himself from the High-Speed Rail discussion and exited the chamber.

Mayor Constantine opened the public comment at 4:56 p.m. The following people were called to speak:

Brian Sullivan

Kathy Sullivan

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

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the workshop at 5:00 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services; and
3. Adopt resolution updating the City's select Development Impact Fees.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
 Protecting the Environment
 Maintaining Fiscal Responsibility
 Supporting Our Youth
 Seniors
 and Entire Community
 Fostering a Positive Organizational Culture

2019 Strategic Priorities

Economic Development
 Financial Stewardship
 Infrastructure

GUIDING DOCUMENTS

Bikeways
 Trails
 Parks and Recreation Masterplan
 General Plan/Housing Element
 Public Safety Master Plan
 Sewer System Master Plan
 Vision Zero
 Water System Master Plan

REPORT NARRATIVE:

In 2016, the City of Morgan Hill adopted its updated General Plan, outlining a plan for the growth of the City through the year 2035. In 2017, the City adopted its:

- 1) Public Safety Master Plan, serving as a foundational document for service delivery decision well into the future;
- 2) Utilities Master Plan Documents to help the Council and the public understand the future build out of the City's water and wastewater systems; and
- 3) Bikeways, Trails, Parks, and Recreation Master Plan to guide the improvement and future development of the City's bikeways, trails, parks, and recreation

system in Morgan Hill.

More recently, in 2018, the City adopted its Storm Drainage Master Plan to evaluate the adequacy of the existing stormwater drainage system capacity, recommending improvements to mitigate existing deficiencies and for servicing future growth. Growth brings the need for both new and expanded infrastructure. A key element of planning for growth is identifying the funding mechanism to pay for such infrastructures.

The City relies on various resources to fund new infrastructure; a portion of funding may come from outside sources, such as federal or state grants, but much of the funding, must be raised at the local level. Therefore, the City works to ensure that new development pays for the infrastructure needs it creates. The City has in place a development impact fee program, assessing various impact fees to new developments to fund infrastructure improvements. Such fee assessments are allowed under the Mitigation Fee Act, California Government Code Section 66000 et seq. (the “Act”).

The General Plan requires the City to periodically update the schedule of development impact fees authorized by the Act to address the impacts of growth on City infrastructure.

On February 8, 2019, the 2019 Draft Development Impact Fee Update Study (“Update Study”) (Attachment No. 1), prepared by Willdan Financial Services, was released to the community via eblast along with the posting on the City’s website.

The maximum justified total impact fees shown in this study would increase total impact fees by about 17% to 37% for residential development, depending on dwelling unit type of residential construction, and by about 11% to 48% for non-residential development, depending on type of construction. The increases are significant in both dollar and percentage terms. However, they are necessary as fees collected would enable the City to maintain adequate public facilities to accommodate new development.

The table below shows the total maximum justified impact fee, change amount, and percentage increases from the current City’s total impact fee.

Land Use	Current Fee	Per Update Study		
		Maximum Justified Fee	Amount Change from Current Fee	% Change from Current Fee
<i>Residential (per dwelling unit)</i>				
Single Family	\$ 38,682	\$ 53,148	\$ 14,466	37%
Multi-Family (>1,200SF)	32,377	41,271	8,894	27%
Multi-Family (<1,200SF)	28,672	33,662	4,990	17%
<i>Nonresidential (per KSF or per hotel room)</i>				
Commercial	\$ 13,476	\$ 19,923	\$ 6,446	48%
Office	9,067	12,628	3,561	39%
Industrial	6,090	8,655	2,564	42%
Auto Dealership	11,673	15,666	3,993	34%
Hotel	3,835	4,251	415	11%

On February 20, 2019, the Update Study was introduced to the City Council. The City Council directed staff to proceed with updating the City's development impact fees as presented in the Update Study. In addition, Council had agreed with staff's recommendation for the following items:

- Reduce the total Priority Bikeways projects to one-third or approximately \$4 million as the City realistically would only be able to raise \$3 million from outside sources for the projects, resulting in a lower than maximum justified traffic impact fee schedule.
- Reduce the new parks to be built by half due to lack of outside sources to fund the operating and maintenance (O&M), resulting in a lower than maximum justified park impact fee schedule.
- Full implementation on July 1, 2019, without phasing in the increases.

On March 21, 2019, two community meeting sessions were held at the Development Services Center – Grand Conference Room. A total of six (6) community members attended the meetings. Concerns raised included the phasing in of increases, and accessory dwelling unit (ADU) density. The majority of the community members that attended the meetings expressed that both in the dollar and percentage terms, the increases from the existing fees are high and the proposed amount does not take into account the Residential Development Control System (RDSCS) contributions which amounted to an average of approximately \$18,000 per allotment, based on the last RDSCS competition. As such, they requested that Council reconsider the phase-in directive that the Council provided to the staff at the February 20, 2019 meeting.

As for the ADU fees, some community members believe the density factor used in the Update Study is high. Morgan Hill Municipal Code Chapter 18.84 and existing state law allow owners to build a maximum of 1,200 square feet for a detached structure. The Update Study uses a residential density factor of 2.0 residents per unit for this category. After further consultation with Planning staff members, staff believes the factor used in the Update Study is appropriate and no further adjustment is recommended. In addition, this is the same factor that was used in prior studies.

On April 2, 2019, staff received a letter from the law office of Hanson Bridgett LLP (Attachment No. 6), raising concerns involving technical aspects of the Act, and potential impact to affordable housing development in Morgan Hill from the proposed impact fee increases. Staff's response (Attachment No. 7) addresses the impact on affordable housing development in Morgan Hill, and the consultant's response (Attachment No. 8) addresses the technical aspects of the mitigation fee act.

Based on the comments received from the community, staff and consultant have made the following changes to the Update Study that was introduced to the City Council in February 2019:

- Adjust the overall dwelling units in order to match residential population growth outlined in General Plan 2035, using the latest density factors
- Changed the Multi-Family residential units to Greater or Less Than 1,200 SF
- Adjust costs for inflation to June 2019
- Added more text throughout to better describe increased project costs
- Remove Police and Fire impact fees from the General Public Facilities to Public Safety Facilities

Due to potential changes in state legislation, staff is now recommending that City Council only accept the impact fee increases from the Update Study that would impact public health and safety. These include Traffic, Water, Storm Drainage, and Public Safety Facilities fees. Fees that are not related to public health and safety, including General Public Facilities and Parks are proposed to be excluded from the update. An update to the Library Facilities impact fee is also proposed to be included because the Update Study shows the proposed impact fee amount is lower than the existing impact fee amount due to changes in service population.

The table below shows the total proposed impact fee, change amount, and percentage increases from the City's current total impact fee.

Land Use	Current Fee	Proposed		
		Proposed Fee	Amount Change from Current Fee	% Change from Current Fee
<u>Residential (per dwelling unit)</u>				
Single Family	\$ 38,682	\$ 43,695	\$ 5,013	13%
Multi-Family (>1,200SF)	32,377	33,417	1,040	3%
Multi-Family (<1,200SF)	28,672	27,388	(1,284)	-4%
<u>Nonresidential (per KSF or per hotel room)</u>				
Commercial	\$ 13,476	\$ 19,510	\$ 6,033	45%
Office	9,067	12,131	3,064	34%
Industrial	6,090	8,251	2,160	35%
Auto Dealership	11,673	15,500	3,827	33%
Hotel	3,835	4,209	373	10%

In addition to the proposed update to the City's select development impact fees, staff will be proposing amendments to the City's existing Quimby Act (Govt. Code § 66477) fee ordinance, which requires residential developers to set aside land, donate conservation easements, or pay fees for park improvements. The amendments to the City's Quimby Act ordinance will be brought for Council consideration in October.

Additional comparison schedules to existing fees are provided as Attachment No. 3 & 4.

COMMUNITY ENGAGEMENT: Inform

Public notice was published in the local newspaper on August 23, 2019, informing the community of the Development Impact Fees adjustment and adoption of the new fees. In addition, two community meeting sessions were held on March 21, 2019, to present the study, and to receive feedback from the community.

ALTERNATIVE ACTIONS:

The City Council could direct staff to make adjustments to the proposed impact fees, phase in the increases, or delay updating the impact fees.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 27, 2017, the City Council approved a consultant agreement with Willdan Financial Services to update the City's development impact fees.

On February 20, 2019, the Updated Study was introduced to the City Council.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of preparing this report is included in the staff's annual workplan. The proposed impact fees would provide sufficient funding from new development for capital

improvements related to that development. The effective date of the updated fees will be 60 days from the adoption date by the City Council.

CEQA (California Environmental Quality Act):

Project, Description of CEQA requirements.

These actions are exempt from CEQA under Section 15273 of Guidelines for CEQA, because they establish, modify, and approve rates and charges for the purposes of obtaining funds for capital projects.

LINKS/ATTACHMENTS:

1. Attachment 1: Morgan Hill Development Impact Fee Update Study - Final Draft 7-9-19
2. Attachment 2: Resolution
3. Attachment 3: DIF - Max Justified per Study vs Existing comparison 09042019
4. Attachment 4: DIF - Proposed vs Existing comparison 09042019
5. Attachment 7: Staff Response to Hanson Bridgett Comments
6. Attachment 5: Letter from BIA
7. Presentation
8. Letter from Glenrock Builders
9. Attachment 6: Hanson Bridgett LLP
10. Attachment 8: Willdan Response to Hanson Bridgett Comments

CITY OF MORGAN HILL

DEVELOPMENT IMPACT FEE UPDATE STUDY

FINAL DRAFT

JULY 9, 2019



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Executive Summary

This report summarizes an analysis of the maximum justified development impact fees allowable to support future development in Morgan Hill through 2035. It is the City's intent that the costs representing future development's share of public facilities and capital improvements be imposed on that development in the form of a development impact fee, also known as a public facilities fee. The public facilities and improvements included in this analysis are divided into the fee categories listed below:

- General Public Facilities;
- Traffic Facilities;
- Library Facilities;
- Park Facilities;
- Water Facilities;
- Storm Drain Facilities; and,
- Public Safety Facilities.

Background and Study Objectives

The primary policy objective of a development impact fee program is to ensure that new development pays the capital costs associated with growth. Although growth also imposes operating costs, there is no similar system to generate revenue from new development for services. The primary purpose of this report is to calculate and present fees that will enable the City to expand its inventory of public facilities as new development creates increases in service demands.

The City imposes public facilities fees under authority granted by the *Mitigation Fee Act* (the *Act*), contained in *California Government Code* Sections 66000 *et seq.* This report provides the necessary findings required by the *Act* for adoption of the fees presented in the fee schedules contained herein.

All development impact fee-funded capital projects should be programmed through the City's six-year Capital Improvement Plan (CIP). Using a CIP can help the City identify and direct its fee revenue to public facilities projects that will accommodate future growth. By programming fee revenues to specific capital projects, the City can help ensure a reasonable relationship between new development and the use of fee revenues as required by the *Mitigation Fee Act*.

Facility Standards and Costs

There are three approaches typically used to calculate facilities standards and allocate the costs of planned facilities to accommodate growth in compliance with the *Mitigation Fee Act* requirements.

The **planned facilities** approach allocates costs based on the ratio of planned facilities that serve new development to the increase in demand associated with new development. This approach is appropriate when specific planned facilities that only benefit new development can be identified, or when the specific share of facilities benefiting new development can be identified. Examples include street improvements to avoid deficient levels of service or a water main extension to a previously undeveloped area. This approach is used for the traffic facilities, park facilities, water facilities and the storm drain facilities fees in this report.

The **existing inventory** approach is based on a facility standard derived from the City's existing level of facilities and existing demand for services. This approach results in no facility deficiencies

attributable to existing development. This approach is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee study. Future facilities to serve growth will be identified through the City's annual capital improvement plan and budget process and/or completion of a new facility master plan. This approach is used for the library facilities fees and general public facilities and public safety facilities fees in this study.

The **system plan** approach is based on a master facilities plan in situations where the needed facilities serve both existing and new development. This approach allocates existing and planned facilities across existing and new development to determine new development's fair share of facility needs. This approach is used when it is not possible to differentiate the benefits of new facilities between new and existing development. Often the system plan is based on increasing facility standards, so the City must find non-impact fee revenue sources to fund existing development's fair share of planned facilities. This approach is not used in this report.

Use of Fee Revenues

Impact fee revenue must be spent on new facilities or expansion of current facilities to serve new development. Facilities can be generally defined as capital acquisition items with a useful life greater than five years. Impact fee revenue can be spent on capital facilities to serve new development, including but not limited to: land acquisition, construction of buildings and infrastructure, the acquisition of vehicles or equipment, information technology, software licenses and equipment.

Development Impact Fee Schedule Summary

Table E.1 summarizes the maximum justified development impact fees that meet the City's identified needs and comply with the requirements of the *Mitigation Fee Act*.

E.1: Maximum Justified Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Water	Storm Drainage	Public Safety Facilities	Total
<i>Residential (DU)</i>								
Single Family	\$ 1,833	\$ 3,373	\$ 1,953	\$ 13,961	\$ 9,318	\$ 1,557	\$ 1,941	\$ 33,936
Multi-Family (Greater than 1,200 SF)	1,621	2,091	1,727	12,342	4,286	1,105	1,716	24,888
Multi-Family (Less than 1,200 SF)	1,214	1,316	1,293	9,245	3,261	514	1,285	18,128
<i>Nonresidential (per KSF or hotel room)</i>								
Commercial	\$ 469	\$ 12,514	-	-	\$ 2,236	\$ 965	\$ 498	\$ 16,682
Office	563	5,026	-	-	2,236	965	597	9,387
Industrial	469	3,272	-	-	1,584	592	498	6,415
Auto Dealership	188	8,837	-	-	2,236	965	199	12,425
Hotel	56	2,024	-	-	746	311	60	3,197

Sources: Tabs 3.6, 4.6, 5.6, 6.9, 7.5, 8.5 and 9.6.

Other Funding Needed

Impact fees may only fund the share of public facilities related to new development in Morgan Hill. They may not be used to fund the share of facility needs generated by existing development or by development outside of the City. As shown in **Table E.2**, approximately \$68.9 million in additional funding will be needed to complete the projects the City currently plans to develop. Non-fee funding is needed because these facilities are needed partially to remedy existing deficiencies and partly to accommodate new development.

The City will need to develop alternative funding sources to fund existing development's share of the planned facilities. Potential sources of revenue include but are not limited to: existing or new general fund revenues, revenues to Residential Development Control System (RDSC) in-lieu accounts, existing or new taxes, special assessments, and grants.

Table E.2: Non-Impact Fee Funding Required

Fee Category	Total Project Cost	Development Fee Revenue	Additional Funding Required
General Public Facilities	\$ 18,000,000	\$ 8,362,130	\$ 9,637,870
Traffic Facilities	56,323,974	34,354,764	21,969,210
Library Facilities	5,580,000	7,895,800	-
Parks	56,429,000	56,429,000	-
Sewer	81,617,139	59,259,594	22,357,545
Water	46,689,058	33,396,751	13,292,307
Storm Drainage ¹	12,042,945	8,080,922	-
Public Safety Facilities	10,450,001	8,854,020	1,595,981
	<u>\$ 287,132,117</u>	<u>\$ 216,632,981</u>	<u>\$ 68,852,912</u>

¹ Existing fund balances fund the difference between total project cost and projected impact fee revenue.

Sources: City of Morgan Hill; Tables 3.3, 3.5, 4.3, 4.4, 4.5, 5.3, 5.5, 6.7, 7.3, 7.4, 8.3, 9.3 and 9.5.

1. Introduction

This report presents an analysis of the need for public facilities to accommodate new development in Morgan Hill. This chapter provides background for the study and explains the study approach under the following sections:

- Public Facilities Financing in California;
- Study Objectives;
- Morgan Hill Impact Fee Program;
- Fee Program Maintenance;
- Study Methodology; and
- Organization of the Report.

Public Facilities Financing in California

The changing fiscal landscape in California during the past 40 years has steadily undercut the financial capacity of local governments to fund infrastructure. Three dominant trends stand out:

- The passage of a string of tax limitation measures, starting with Proposition 13 in 1978 and continuing through the passage of Proposition 218 in 1996;
- Declining popular support for bond measures to finance infrastructure for the next generation of residents and businesses; and
- Steep reductions in federal and state assistance.

Faced with these trends, many cities and counties have had to adopt a policy of “growth pays its own way.” This policy shifts the burden of funding infrastructure expansion from existing ratepayers and taxpayers onto new development. This funding shift has been accomplished primarily through the imposition of assessments, special taxes, and development impact fees also known as public facilities fees. Assessments and special taxes require the approval of property owners and are appropriate when the funded facilities are directly related to the developing property. Development impact fees, on the other hand, are an appropriate funding source for facilities that benefit all development jurisdiction-wide. Development impact fees need only a majority vote of the legislative body for adoption.

Study Objectives

The primary policy objective of a public facilities fee program is to ensure that new development pays the capital costs associated with growth. Policy 16.4(c) of the Morgan Hill General Plan states that the City will “Fully utilize existing strategies to achieve an urban level of public services throughout the city, including require [ing] developers to dedicate land and/or pay to offset the costs relating to the provision and expansion of public services and facilities.” The primary purpose of this report is to update the City’s impact fees based on the most current available facility plans and growth projections. The proposed fees will enable the City to expand its inventory of public facilities as new development leads to increases in service demands.

The City imposes public facilities fees under authority granted by the Mitigation Fee Act (the Act), contained in California Government Code Sections 66000 et seq. This report provides the necessary findings required by the Act for adoption of the fees presented in the fee schedules presented in this report.

Morgan Hill is forecast to experience moderate growth through this study’s planning horizon of 2035. This growth will create an increase in demand for public services and the City facilities

required to deliver them. Given the revenue challenges described above, Morgan Hill has decided to use a development impact fee program to ensure that new development funds the share of facility costs associated with growth. This report makes use of the most current available growth forecasts and facility plans to update the City's existing fee program to ensure that the City's fee program is representative of the facility needs resulting from new development.

Morgan Hill Impact Fee Program

Morgan Hill currently charges impact fees to fund the expansion of general public facilities, water facilities, storm drain facilities, park facilities, recreation and community center facilities, library facilities, fire facilities, police facilities, traffic facilities, and sewer facilities to serve new development. Most of the fees were established in 2002 or 2003 and have since been comprehensively updated, in addition to periodic updates for inflation.

This study provides the documentation needed for a comprehensive update of the City's impact fee program, with the exception of the City's recreation facilities fee and the sewer facilities fee. Two former fee categories, fire and police facilities fees, will be incorporated into a new public safety facilities fee, and the individual categories discontinued. All existing revenue within these two restricted fee funds must be spent on the purpose for which it was collected.

Fee Program Maintenance

Once a fee program has been adopted it must be properly maintained to ensure that the revenue collected adequately funds the facilities needed by new development. To avoid collecting inadequate revenue, the inventories of existing facilities and costs for planned facilities must be updated periodically for inflation, and the fees recalculated to reflect the higher costs. The use of established indices for each facility included in the inventories (land, buildings, and equipment), such as the *Engineering News-Record*, is necessary to accurately adjust the impact fees. For a list of recommended indices, see Chapter 10.

While fee updates using inflation indices are appropriate for annual or periodic updates to ensure that fee revenues keep up with increases in the costs of public facilities, it is recommended to conduct more extensive updates of the fee documentation and calculation (such as this study) when significant new data on growth forecasts and/or facility plans become available. For further detail on fee program implementation, see Chapter 10.

Morgan Hill last completed comprehensive review of the general public facilities, library, park, storm drain, fire and police impact fees in 2010. The city last comprehensively updated the community recreation centers and traffic facilities fees in 2015. Impact fees must be adjusted for inflation to fund new development's fair share of planned facilities. If impact fees are not adjusted for inflation, then deficiencies will grow, since the impact fees will no longer fully fund new development's fair share of planned facilities.

Study Methodology

Development impact fees are calculated to fund the cost of facilities required to accommodate growth. The six steps followed in this development impact fee study include:

1. **Estimate existing development and future growth:** Identify a base year for existing development and a growth forecast that reflects increased demand for public facilities;
2. **Identify facility standards:** Determine the facility standards used to plan for new and expanded facilities;
3. **Determine facilities required to serve new development:** Estimate the total amount of planned facilities, and identify the share required to accommodate new development;

4. **Determine the cost of facilities required to serve new development:** Estimate the total amount and the share of the cost of planned facilities required to accommodate new development;
5. **Calculate fee schedule:** Allocate facilities costs per unit of new development to calculate the development impact fee schedule; and
6. **Identify alternative funding requirements:** Determine if any non-fee funding is required to complete projects.

The key public policy issue in development impact fee studies is the identification of facility standards (step #2, above). Facility standards document a reasonable relationship between new development and the need for new facilities. Standards ensure that new development does not fund deficiencies associated with existing development.

Types of Facility Standards

There are three separate components of facility standards:

- ♦ *Demand standards* determine the amount of facilities required to accommodate growth, for example, park acres per thousand residents, square feet of library space per capita, or gallons of water per day. Demand standards may also reflect a level of service such as the vehicle volume-to-capacity (V/C) ratio used in traffic planning.
- ♦ *Design standards* determine how a facility should be designed to meet expected demand, for example, park improvement requirements and technology infrastructure for city office space. Design standards are typically not explicitly evaluated as part of an impact fee analysis but can have a significant impact on the cost of facilities. Our approach incorporates the cost of planned facilities built to satisfy the City's facility design standards.
- ♦ *Cost standards* are an alternate method for determining the amount of facilities required to accommodate growth based on facility costs per unit of demand. *Cost standards* are useful when demand standards were not explicitly developed for the facility planning process. *Cost standards* also enable different types of facilities to be analyzed based on a single measure (cost or value) and are useful when different facilities are funded by a single fee program. Examples include facility costs per capita, cost per vehicle trip, or cost per gallon of water per day.

New Development Facility Needs and Costs

A number of approaches are used to identify facility needs and costs to serve new development. This is often a two-step process: (1) identify total facility needs, and (2) allocate to new development its fair share of those needs.

There are three common methods for determining new development's fair share of planned facilities costs: the **planned facilities method**, the **existing inventory method** and the **system plan method**. Often the method selected depends on the degree to which the community has engaged in comprehensive facility master planning to identify facility needs.

The formula used by each approach and the advantages and disadvantages of each method is summarized below:

Planned Facilities Method

The planned facilities method allocates costs based on the ratio of planned facility costs to demand from new development as follows:

$$\frac{\text{Cost of Planned Facilities}}{\text{New Development Demand}} = \$/\text{unit of demand}$$

This method is appropriate when planned facilities will entirely serve new development, or when a fair share allocation of planned facilities to new development can be estimated. An example of the former is a water main extension to a previously undeveloped area. An example of the latter is expansion of an existing library building and book collection, which will be needed only if new development occurs, but which, if built, will in part benefit existing development, as well. Under this method new development funds the expansion of facilities at the standards used in the applicable planning documents. This method is used to calculate the traffic facilities, park facilities, water facilities and the storm drain facilities fees in this study.

Existing Inventory Method

The existing inventory method allocates costs based on the ratio of existing facilities to demand from existing development as follows:

$$\frac{\text{Current Value of Existing Facilities}}{\text{Existing Development Demand}} = \$/\text{unit of demand}$$

Under this method new development funds the expansion of facilities at the same standard currently serving existing development. By definition the existing inventory method results in no facility deficiencies attributable to existing development. This method is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee study. Future facilities to serve growth are identified through an annual capital improvement plan and budget process, possibly after completion of a new facility master plan. This method is used to calculate the library facilities fees and general public facilities and public safety facilities fees in this study.

System Plan Method

This method calculates the fee based on: the value of existing facilities plus the cost of planned facilities, divided by demand from existing plus new development:

$$\frac{\text{Value of Existing Facilities} + \text{Cost of Planned Facilities}}{\text{Existing} + \text{New Development Demand}} = \$/\text{unit of demand}$$

This method is useful when planned facilities need to be analyzed as part of a system that benefits both existing and new development. It is difficult, for example, to allocate a new fire station solely to new development when that station will operate as part of an integrated system of fire stations that together achieve the desired level of service.

The system plan method ensures that new development does not pay for existing deficiencies. Often facility standards based on policies such as those found in General Plans are higher than existing facility standards. This method enables the calculation of the existing deficiency required to bring existing development up to the policy-based standard. The local agency must secure non-fee funding for that portion of planned facilities required to correct the deficiency to ensure that new development receives the level of service funded by the impact fee. This method is not used in this report.

Organization of the Report

The determination of a public facilities fee begins with the selection of a planning horizon and development of growth projections for population and employment. These projections are used throughout the analysis of different facility categories, and are summarized in Chapter 2.

Chapters 3 through 9 identify facility standards and planned facilities, allocate the cost of planned facilities between new development and existing development, and identify the maximum justified development impact fee for each of the following facility categories:

- General Public Facilities;
- Traffic Facilities;

- Library Facilities;
- Park Facilities;
- Water Facilities;
- Storm Drain Facilities; and,
- Public Safety Facilities.

Chapter 10 details the procedures that the City must follow when implementing a development impact fee program. Impact fee program adoption procedures are found in *California Government Code* Sections 66016 through 66018.

The five statutory findings required for adoption of the proposed public facilities fees in accordance with the Mitigation Fee Act are documented in Chapter 11.

2. Growth Forecasts

Growth projections are used as indicators of demand to determine facility needs and allocate those needs between existing and new development. This chapter explains the source for the growth projections used in this study based on a 2019 base year and a planning horizon of 2035.

Estimates of existing development and projections of future growth are critical assumptions used throughout this report. These estimates are used as follows:

- The estimate of existing development in 2019 is used as an indicator of existing facility demand and to determine existing facility standards.
- The estimate of total development at the 2035 planning horizon is used as an indicator of future demand to determine total facilities needed to accommodate growth and remedy existing facility deficiencies, if any.
- Estimates of growth from 2019 through 2035 are used to (1) allocate facility costs between new development and existing development, and (2) estimate total fee revenues.

The demand for public facilities is based on the service population, dwelling units or nonresidential development creating the need for the facilities. The service population for general public facilities includes residents and workers. The service population for parks and libraries includes only residents. Demand for water facilities is based on flow generation factors that vary by land use. The demand for storm drain facilities is based on the ratio of impervious surface to non-impervious surface that a development will create. Water and storm drain demand factors are provided per dwelling unit, per thousand building square feet of nonresidential space and per hotel room.

Land Use Types

To ensure a reasonable relationship between each fee and the type of development paying the fee, growth projections distinguish between different land use types. The land use types that impact fees have been calculated for are defined below.

- **Single family:** Detached and attached one-unit dwellings. Per *Municipal Code Section 18.04.155*, a single family detached dwelling unit is defined as, “a dwelling designed to contain a single dwelling unit situated on a single lot.” Per *Municipal Code Section 18.04.154*, a single family attached dwelling unit is defined as, “a dwelling attached to another dwelling on at least fifty percent of the length of the attached side of the building, sometimes called a townhouse, duet, or row house.”
- **Multi-family:** All attached multi-family dwellings including duplexes and condominiums. Per *Municipal Code Section 18.04.150*, a multi-family unit is defined as, “a building designed and used as a residence for three or more families living independently of each other and containing three or more dwelling units. Per *Municipal Code Section 18.04.157*, a duplex is defined as, “a structure which is designed and used as a residence for two families living independently of each other and containing two dwelling units.”
 - **Greater than 1,200 square feet:** Multi-family units with more than 1,200 square feet of living space.
 - **Less than 1,200 square feet:** Multi-family units with less than 1,200 square feet of living space.
- **Commercial:** All commercial, retail and educational development.
- **Office:** All general, professional, and medical office development.

- **Industrial:** All manufacturing and warehouse development.
- **Automobile Dealerships:** All land uses selling new or used automobile or other motor vehicles.
- **Hotel/Motel:** All lodging development, including hotels and motels.

Some developments may include more than one land use type, such as a mixed-use development with both multi-family and commercial uses. In those cases, the facilities fee would be calculated separately for each land use type.

The City has the discretion to determine which land use type best reflects a development project's characteristics for purposes of imposing an impact fee and may adjust fees for special or unique uses to reflect the impact characteristics of the use.

Existing and Future Development

Table 2.1 shows the estimated number of residents, dwelling units, employees, and building square feet in Morgan Hill, both in 2019 and in 2035. Existing residents and dwelling units are based on California Department of Finance (DOF) data. These estimates exclude "group quarters" resident populations, since they do not contribute to demand for facilities. Estimates of residents in 2035 also exclude group quarters residents and is based on Municipal Code Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200.¹

Base year dwelling units for single family units are based on DOF data. Multi-family units less than 1,200 square feet are assumed to be equivalent to the senior/ downtown/accessory dwelling unit estimates from the City's 2015 Traffic Impact Fee study. Multifamily base year units greater than 1,200 square feet are estimated as the difference between total units, single family units from DOF and multi-family units less than 1,200 square feet. Total dwelling units in 2035 are estimated based on input from the City and the current occupant density factors in Table 2.2, such that the growth increment calculated by multiplying the growth in dwelling units, by the occupancy density factors from Table 2.2 matches the projected growth in residents.

Base year employees are estimated based on data provided by the US Census' American Community Survey and exclude local government employees. Future employees are estimated based on data from the Association of Bay Area Governments (ABAG) used in the Morgan Hill General Plan. Estimates of base year and planning horizon building square feet come from the Morgan Hill 2035 Final EIR.

¹ 58,200 less existing Group Quarters Population of 386 = 57,814.

Table 2.1: Existing and New Development

	2019	2035	Increase
<u>Residents</u> ¹	45,360	57,814	12,454
<u>Dwelling Units</u> ²			
Single Family	11,598	13,170	1,572
Multi-Family (Greater than 1,200 SF)	2,407	4,694	2,287
Multi-Family (Less than 1,200 SF)	<u>1,100</u>	<u>1,900</u>	<u>800</u>
Total	15,105	19,252	4,147
<u>Employment</u> ³	16,446	21,520	5,074
<u>Building Square Feet (000s)</u> ⁴			
Commercial	2,610	3,727	1,117
Office	522	1,151	629
Industrial	5,935	7,715	1,780
Auto Dealership	<u>120</u>	<u>176</u>	<u>56</u>
Total	9,187	12,769	3,582
<u>Hotel Rooms</u>	919	1,134	215

¹ Excludes "group quarters" resident populations. Existing residents from DOF data.

Estimates of residents in 2035 based on Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200. 58,200 less existing Group Quarters Population 386 = 57,814.

² Base year dwelling units for single family based on DOF data. Multi-family units less than 1,200 sq. ft. are assumed to be equivalent to the senior/ down town n/accessory dwelling unit estimates from the City's 2015 Traffic Impact Fee study. Multifamily base year units greater than 1,200 sq. ft. are estimated as the difference between total units, single family units from DOF and multi-family units less than 1,200 square feet. Total dwelling units in 2035 based on input from the City and the current occupant density factors in Table 2.2.

³ Estimate of 16,894 total workers from American Community Survey Table B08604. 448 local government workers are further excluded from that figure based on data from OnTheMap.ces.census.gov.

⁴ Building square feet data from 2035 horizon year projection summarized on page 5-2 of the responses to comments in the Morgan Hill 2035 Final EIR.

Sources: California Department of Finance (DOF) Table E-5, 2019; U.S. Census Bureau, LEHD Origin-Destination Employment Statistics (2002-2015) accessed at <https://onthemap.ces.census.gov>; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

Occupant Densities

The general public facilities, library facilities, park facilities and public safety facilities fees are based on allocating a cost per resident or employee to new development. Occupant density assumptions ensure a reasonable relationship between the size of a development project, the increase in service population associated with the project, and the amount of the fee.

Occupant densities (residents per dwelling unit or workers per building square foot or hotel room) are the most appropriate characteristics to use for these impact fees. The fee imposed should be based on the land use type that most closely represents the probable occupant density or impervious surface (for storm drain fees) of the development.

The average occupant density factors used in this report are shown in **Table 2.2**. The residential density factors are based on data for Morgan Hill from the U.S. Census' American Community Survey. The nonresidential factors are based on data from the City of Morgan Hill General Plan 2035 EIR.

Table 2.2: Occupant Density

<u>Residential</u>		
Single Family	3.02	Residents per dwelling unit
Multi-Family (Greater than 1,200 SF)	2.67	Residents per dwelling unit
Multi-Family (Less than 1,200 SF)	2.00	Residents per dwelling unit
<u>Nonresidential</u>		
Commercial	2.50	Employees per 1,000 square feet
Office	3.00	Employees per 1,000 square feet
Industrial	2.50	Employees per 1,000 square feet
Auto Dealership	1.00	Employees per 1,000 square feet
Hotel/Motel	0.30	Employees per room

Sources: U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, Tables B25024 and B25033; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

3. General Public Facilities

This chapter documents the impact fee for general public facilities. The general public facilities in this fee category include a variety of facilities including City Hall, the Development Services Center and the corporation yard.

Service Population

General public facilities are used to provide services to both residents and businesses. The service population used to determine the demand for general public facilities includes both residents and workers.

Table 3.1 shows the existing and future projected service population for general public facilities. While specific data is not available to estimate the actual ratio of demand per resident to demand by businesses (per worker) for these services, it is reasonable to assume that demand for these services is less for one employee compared to one resident, because nonresidential buildings are typically occupied less intensively than dwelling units. The 0.31-weighting factor for workers is based on a 40-hour workweek divided by the total number of non-work hours in a week (128) and reflects the degree to which nonresidential development yields a lesser demand for general public facilities.

Table 3.1: General Public Facilities Service Population

	A Persons	B Weighting Factor	A x B = C Service Population
<u>Residents</u>			
Existing (2019)	45,360	1.00	45,360
New Development (2019-2035)	12,454	1.00	12,454
Total (2035)	57,814		57,814
<u>Workers</u>			
Existing (2019)	16,446	0.31	5,100
New Development (2019-2035)	5,074	0.31	1,600
Total (2035)	21,520		6,700
<u>Combined Residents and Weighted Workers</u>			
Existing (2019)			50,460
New Development (2019-2035)			14,054
Total (2035)			64,514

¹ Workers are weighted at 0.31 of residents based on a 40 hour work week out of a possible 128 non-work hours in a week (40/128 = 0.31)

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's general public facility inventory, the cost of planned facilities and facility standards.

Existing Inventory

Table 3.2 shows the existing inventory of general public facilities, along with the facilities' estimated replacement value. The estimated land value was developed based on data from four recent appraisals of City owned property and is used consistently throughout this report to value City-owned land. Building values are based on the estimated replacement cost of each facility. Building values were informed by the City's recent construction cost experience. Table 3.2 also lists the replacement cost of the City's owned fleet of general public facilities vehicles, including public works and other fleet vehicles.

Table 3.2: Existing General Public Facilities Inventory

	Inventory	Unit	Unit Cost	Replacement Cost
<u>Land (acres)</u>				
City Hall, with Villas	4.81	acres	\$ 790,000	\$ 3,800,000
Development Services Center	1.65	acres	790,000	1,304,000
Public Works Corporation Yard	<u>2.07</u>	acres	790,000	<u>1,635,000</u>
Subtotal - Land	8.53			\$ 6,739,000
<u>Buildings (square feet)</u>				
City Hall, with Villas ¹	16,800	sq. ft.	\$ 580	\$ 9,744,000
City Hall Improvements				2,051,000
Development Services Center ¹	12,600	sq. ft.	580	3,603,000
Public Works Corporation Yard	<u>5,228</u>	sq. ft.	300	<u>1,568,000</u>
Subtotal - Buildings	34,628			\$ 16,966,000
<u>Vehicles²</u>				<u>\$ 5,777,700</u>
<u>Existing Fund Balance³</u>				<u>\$ 520,300</u>
Total Value - Existing Facilities				\$ 30,003,000

¹ City Hall and Development Services Center building unit costs are based on the actual construction cost of the Development Services Center.

² The City owns 93 vehicles and pieces of public works equipment listed within the general public facilities category.

³ Existing fund balance as of 6/30/2018.

Sources: City of Morgan Hill; Willdan Financial Services.

Planned Facilities

Table 3.3 shows the additional general public facilities the City plans to develop through the 2035 planning horizon. The City plans to replace and expand its City Hall annex with a larger permanent facility to accommodate future demand caused by new development. No land costs

are included because the project will take place on property that the City currently owns. In addition to the improvements to City Hall, the City plans on moving the existing corporation yard from its current site, to a larger facility.

Table 3.3: Planned General Public Facilities

	Value
Corporation Yard Improvements and Expansion	\$ 15,000,000
Replace and Expand City Hall Annex With Permanent Structure	3,000,000
Total Cost of Planned Facilities	\$ 18,000,000

Sources: City of Morgan Hill.

Cost Allocation

Table 3.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 3.4: General Public Facilities Existing Standard

Value of Existing Facilities	\$ 30,003,000
Existing Service Population	50,460
Cost per Capita	\$ 595
Facility Standard per Resident	\$ 595
Facility Standard per Worker ¹	184

¹ Based on a weighing factor of 0.31.

Sources: Tables 3.1, 3.2 and 3.3.

Revenue Projection

The City plans to use general public facilities fee revenue to construct improvements to add to the system of general public facilities to serve new development. **Table 3.5** details a projection of fee revenue, based on the service population growth increment identified in Table 3.1. To fully fund the planned facilities, the City will have to identify \$9.6 million of alternative funding through the planning horizon. However, because the existing standard was used to calculate the fees, the City will meet the requirements of the Mitigation Fee Act so long as the projected \$8.4 million of fee revenue is used to fund new or expanded facilities to serve new development.

The City can use any other funding source other than impact fees to fund the balance of the planned facilities. Potential sources of revenue include, but are not limited to, existing or new general fund revenues, existing or new taxes, special assessments, grants and donations.

Table 3.5: Revenue Projection - Existing Standard

Cost per Capita	\$ 595
Growth in Service Population (2019- 2035)	14,054
Fee Revenue	\$ 8,362,130
Net Cost of Planned Facilities	18,000,000
Non-Fee Revenue to Be Identified	\$ (9,637,870)

Sources: Tables 3.1, 3.3 and 3.4.

Use of Fee Revenue

The City can use general public facilities fee revenues for the construction or purchase of buildings, equipment and land that are part of the system of general public facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 3.3.

Fee Schedule

Table 3.6 shows the maximum justified general public facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit and employment densities (persons per dwelling unit or employees per 1,000 square feet of nonresidential building space). The total fee includes a two percent (2%) percent administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 3.6: General Public Facilities Fee - Existing Standard

Land Use	A	B	C = A x B		D = C x 0.02	E = C + D	F	G = E x F
	Cost Per Capita	Density	Base Fee ¹	Admin Charge ^{1, 2}		Total Fee ¹	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 595	3.02	\$ 1,797	\$ 36		\$ 1,833		
Multi-Family (Greater than 1,200 SF)	595	2.67	1,589	32		1,621		
Multi-Family (Less than 1,200 SF)	595	2.00	1,190	24		1,214		
<u>Nonresidential</u>								
Commercial	\$ 184	2.50	\$ 460	\$ 9		\$ 469	21.78	\$10,215
Office	184	3.00	552	11		563	21.78	12,262
Industrial	184	2.50	460	9		469	26.14	12,260
Auto Dealership	184	1.00	184	4		188	26.14	4,914
Hotel	184	0.30	55	1		56	21.78	1,220

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio from the General Plan. FAR for commercial and office assumed to be 0.5 based on the "General Office" land use. FAR for Industrial and auto dealership assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 2.2 and 3.4.

4. Traffic Facilities

This chapter summarizes an analysis of the need for transportation facilities, including roadway segments, bike improvements and multimodal intersection improvements, to accommodate new development. The chapter documents a reasonable relationship between new development and the impact fee for funding of these facilities.

Trip Generation by Land Use

The share of roadway improvement costs allocated to each unit of new development is based on the relative amount of new trip demand generated by that development. Trip demand during the afternoon peak hour of traffic is used because this is generally the busiest time of day for traffic, and road improvements are needed to provide capacity to accommodate peak levels of traffic. The traffic study used for this analysis identified improvements needed to mitigate future deficiencies during the peak hour.

Table 4.1 shows trip generation rate assumptions used in this analysis (dwelling unit, 1,000 square feet of nonresidential development or hotel room). As new development generates increased vehicle trips for the City's transportation network, additional capacity in the system will be needed in the form of the improvements described in this report. Trip generation by major land use category allow the analysis to incorporate different estimates of demand for transportation facilities. Trip generation rates are applied to development projections to allocate improvement costs by land use type. The trip generation rates used for this analysis are based on years of study of major land use categories by the Institute of Transportation Engineers (9th Edition).

Table 4.1: PM Peak Hour Trip Rates

ITE Category		PM Peak Hour Trip Rate ¹
<u>Residential</u>		
Single Family	Single Family Housing (210)	1.00
Multi-Family (Greater than 1,200 SF)	Apartment (220)	0.62
Multi-Family (Less than 1,200 SF)	Mid-Rise Apartment (223)	0.39
<u>Nonresidential</u>		
Commercial	Shopping Center (820)	3.71
Office	General Office Building (710)	1.49
Industrial	General Light Industrial (110)	0.97
Auto Dealership	New Car Sales (841)	2.62
Hotel Room (per room)	Hotel (310)	0.60

¹ Trips per dwelling unit or per 1,000 square feet of nonresidential building space, or per hotel room.

Source: Institute of Traffic Engineers, Trip Generation, 9th Edition.

Growth in Trip Demand Through 2035

Peak hour trip demand generated by new development is a reasonable measure of new development's demand for traffic facilities. The need for new or expanded roads and other facilities is typically determined based on peak-hour trip volumes because capacity needs are based on the busiest periods of the day. The trip generation rates from Table 4.1, multiplied by dwelling units for residential land use categories or by thousands of square feet of building space or hotel rooms for nonresidential categories from Table 2.1, equals the total peak hour trip demand generated by that land use type. **Table 4.2** shows the trip demand generated by existing development and anticipated new development in Morgan Hill through the 2035 planning horizon.

Table 4.2: Land Use Scenario and Total Trips

Land Use	PM Peak	2019		Growth 2019 to 2035		Total - 2035	
	Hour Trip Rate	Units / 1,000 SF	Trips	Units / 1,000 SF	Trips	Units / 1,000 SF	Trips
<u>Residential</u>							
Single Family	1.00	11,598	11,598	1,572	1,572	13,170	13,170
Multi-Family (Greater than 1,200 SF)	0.62	2,407	1,492	2,287	1,418	4,694	2,910
Multi-Family (Less than 1,200 SF)	0.39	<u>1,100</u>	<u>429</u>	<u>800</u>	<u>312</u>	<u>1,900</u>	<u>741</u>
Total		15,105	13,519	4,659	3,302	19,764	16,821
<u>Nonresidential</u>							
Commercial	3.71	2,610	9,682	1,117	4,145	3,727	13,827
Office	1.49	522	777	629	938	1,151	1,715
Industrial	0.97	5,935	5,757	1,780	1,727	7,715	7,484
Auto Dealership	2.62	120	314	56	147	176	461
Hotel Rooms	0.60	<u>919</u>	<u>551</u>	<u>215</u>	<u>129</u>	<u>1,134</u>	<u>680</u>
Subtotal		10,106	17,081	3,797	7,086	13,903	24,167
Total			30,600		10,388		40,988
			74.7%		25.3%		100%

Sources: Tables 2.1 and 4.1.

Traffic Impact Fee Project Costs

Table 4.3 shows the improvements needed to accommodate projected 2035 traffic volumes. Project costs were estimated by City Staff. Each project included in the fee program, was either included in the original fee program, or is needed as a direct result of trip demand from new development. Consequently, the entire cost of planned facilities, with no existing deficiencies is allocated to new development in this impact fee.

Consistent with the current fee program, this update assumes that developers will dedicate 36' of right-of-way, including (site work and landscaping) on each side. Developers will dedicate 26' of road improvements, including (curb, gutter & pavement) on each side. The impact fee will fund the remainder of the improvements.

Table 4.3: Project Cost Summary

No	Road	Location	Total Project Cost	Total Project Cost ¹	Cost Allocation to New Development	Allocation To Existing Deficiencies	Total Cost Allocated To New Development
1	Cochrane Road	Monterey Road to Hwy 101	\$ 377,452	\$ 423,848	100%	0%	\$ 423,848
2	Cochrane Road	Hwy 101 to Mission View Drive	504,229	566,208	100%	0%	566,208
3	Cochrane Road	Mission View Drive to Peet Road	753,315	845,911	100%	0%	845,911
4	Dunne Avenue	Hill Road to Gallop Drive	691,081	776,027	100%	0%	776,027
5	Dunne Avenue	Del Monte Avenue to Monterey Road	147,180	165,271	100%	0%	165,271
6	Hill Road/Peet Road	Half Road to Cochrane Road	-	-	100%	0%	-
7	Hill Road	Main Avenue to Barrett Avenue	1,071,486	1,203,191	100%	0%	1,203,191
8	Madrone Parkway	Hale Avenue to Monterey Road	898,829	2,000,000	100%	0%	2,000,000
9	Madrone Parkway	Monterey Road to Butterfield Blvd.	493,629	554,305	100%	0%	554,305
10	Main Avenue	Depot Street to Butterfield Blvd.	36,341	40,808	100%	0%	40,808
11	Main Avenue	Laurel Street to Condit Road	652,393	732,584	100%	0%	732,584
12	Main Avenue	Condit Road To Hill Road	-	-	100%	0%	-
13	Murphy/Mission View Dr.	Cochrane Road to Half Road	762,521	856,248	100%	0%	856,248
14	Murphy/Mission View Dr.	Half Road to Main Avenue	1,183,284	1,328,731	100%	0%	1,328,731
15	Murphy Avenue	Main Avenue to Diana Avenue	1,183,284	1,328,731	100%	0%	1,328,731
16	Murphy Avenue	Diana Avenue to Barrett Avenue	1,522,820	1,710,002	100%	0%	1,710,002
17	Hale Avenue ²	Various	630,059	22,000,000	56.8%	43.2%	12,500,000
25	Butterfield Blvd.	Madrone Parkway to Cochrane Road	511,043	573,859	100%	0%	573,859
26	Tennant Avenue	E HWY 101 to Murphy Avenue	1,286,920	1,445,105	100%	0%	1,445,105
27	Tennant Avenue	Juan Hernandez Drive to HWY 101	790,942	888,163	100%	0%	888,163
28	Watsonville Road	Monterey Road to La Alameda Drive	454,110	509,928	100%	0%	509,928
29	Monterey Road	Tilton Avenue to Cochrane Road	2,291,726	2,573,420	100%	0%	2,573,420
30	Monterey Road	Cochrane Road to Main Avenue	1,977,697	2,220,791	100%	0%	2,220,791
31	Monterey Road	Dunne Avenue to Middle Avenue	1,327,651	1,490,843	100%	0%	1,490,843
Total			\$ 19,547,992	\$ 44,233,974			\$ 34,733,974

¹ Total project costs increased 12.3% based on changes in ENR's Construction Cost Index from 2015 to June, 2019.

² This project includes former projects numbered 17 to 24 from existing fee program. Total project cost is \$22,000,000. VTA Measure B will contribute \$9,500,000 towards this project, so the net impact fee contribution is \$12,500,000.

Source: City of Morgan Hill.

Table 4.4 lists the priority bikeway projects and multimodal intersection improvement projects identified in Table 5-1 of the City's Bikeways, Trails, Parks and Recreation Master Plan (2017). A share of these projects is allocated to new development, based on new development's share of total trip demand in 2035, as identified in Table 4.2.

Table 4.4: Priority Bikeway Projects

Project Description	Location	Total Project Cost
Buffered Bike Lanes	Cochrane Rd and Malaguerra Ave from Monterey Rd to Coyote Creek Trailhead	\$ 1,200,000
Buffered Bike Lanes	Monterey Rd from Tilton Ave to Butterfield Blvd/Watsonville Rd	2,400,000
Buffered Bike Lanes	Burnett Rd from Monterey Rd to Coyote Creek (Sobrato School Access)	750,000
Buffered Bike Lanes	Santa Teresa Corridor, Hale Ave from Tilton Ave to W Main Ave	750,000
Buffered Bike Lanes	West Main Ave from Monterey Rd to Dewitt Ave	450,000
Protected Bike Lanes	E Main Ave from Monterey Rd to Hill Rd (Live Oak High School Access and Coyote Creek Connection) (Interim step Buffered Bike Lanes)	3,800,000
Bicycle Boulevard	Morning Star Dr/Peet Rd from Eagle View Dr to Cochrane Rd to Coyote Creek Trailhead	480,000
Bicycle Boulevard	Depot Street from E Main Ave to E Dunne Ave	380,000
Multi-Modal Intersection Improvements	Monterey Rd Downtown between E Main Ave and E Dunne Ave	790,000
Multi-Modal Intersection Improvements	E Main Ave and Butterfield Blvd	350,000
Multi-Modal Intersection Improvements	W Main Ave and Hale Ave	10,000
Multi-Modal Intersection Improvements	Cochrane Rd and Highway 101 (North & South ramps, Madrone Pkwy and Depaul Dr)	130,000
Multi-Modal Intersection Improvements	Monterey Rd and Cochrane Rd	350,000
Multi-Modal Intersection Improvements	Butterfield Blvd and Cochrane Rd	130,000
Multi-Modal Intersection Improvements	Monterey Rd and Tilton Ave/Burnett Ave	120,000
Total		\$12,090,000
Allocation to New Development		25.3%
Cost Allocated to New Development		\$ 3,058,770

Sources: Table 5-1, Bikeways, Trails, Parks and Recreation Master Plan, 2017; Table 4.2, Willdan Financial Services.

Cost Allocation

Based on the total improvement costs allocated to new development shown in Tables 4.3 and 4.4, and the anticipated new trip demand shown in Table 4.2, **Table 4.5** calculates new development's cost per trip demand unit. Existing fund balances are subtracted from the total project costs to ensure that the impact fee only funds new development's share of the improvements.

Table 4.5: Cost per Trip to Accommodate Growth

Fee Program Share of Planned Facilities Costs	\$ 34,733,974
New Development Allocation of Bike Project Costs	3,058,770
Less Existing Fund Balance	<u>(3,437,980)</u>
Net Costs	\$ 34,354,764
 Growth in Trip Demand	 <u>10,388</u>
 Cost per Trip	 \$ 3,307

Sources: Tables 4.2, 4.3 and 4.4; Willdan Financial Services.

Fee Schedule

Table 4.6 shows the maximum justified traffic facilities fee schedule. The cost per trip is multiplied by the PM peak hour trip rate for each land use to determine the fee per dwelling unit, on 1,000 square feet of nonresidential building space. The total fee includes a two-percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to City programs for legal, accounting, and other departmental and administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two-percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 4.6: Maximum Justified Traffic Impact Fee Schedule

Land Use	A	B	C = A x B		D = C x 0.02		E = C + D	E / 1,000
	Cost Per Trip	PM Peak Hour Trip Rate	Base Fee ¹	Admin Charge ^{1, 2}			Total Fee ¹	Fee per Sq. Ft.
<u><i>Residential</i></u>								
Single Family	\$ 3,307	1.00	\$ 3,307	\$ 66			\$ 3,373	
Multi-Family (Greater than 1,200 SF)	3,307	0.62	2,050	41			2,091	
Multi-Family (Less than 1,200 SF)	3,307	0.39	1,290	26			1,316	
<u><i>Nonresidential</i></u> ³								
Commercial	\$ 3,307	3.71	\$ 12,269	\$ 245			\$ 12,514	\$ 12.51
Office	3,307	1.49	4,927	99			5,026	5.03
Industrial	3,307	0.97	3,208	64			3,272	3.27
Auto Dealership	3,307	2.62	8,664	173			8,837	8.84
Hotel Room (per room)	3,307	0.60	1,984	40			2,024	2.02

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential or per hotel room.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Fee per trip of \$3,307 plus 2% administration cost totaling \$3,373 per trip can be used to calculate fee for any land use using the land use's PM peak hour trip rate.

Sources: Tables 4.1 and 4.5; Willdan Financial Services.

5. Library Facilities

The purpose of the library impact fee is to fund the library facilities needed to serve new development. A maximum justified fee is presented based on maintaining the existing standard of library facilities.

Service Population

Library facilities primarily provide services to residents. The service population used to determine the demand for library facilities only includes residents and excludes workers. The service area of the Morgan Hill Library is greater than just within the City limits. **Table 5.1** shows the current library facilities service population and the estimated service population at the planning horizon of 2035. Estimates of residents outside of the City are based on ABAG data.

Table 5.1: Library Facilities Service Population

	Residents
<i>Existing Service Population (2019)</i>	
City of Morgan Hill	45,360
Surrounding Unincorporated Area	9,400
Total	54,760
<i>New Development (2019-2035)</i>	
City of Morgan Hill	12,454
Surrounding Unincorporated Area ¹	11,200
Total	23,654
Total (2035)	78,414

¹ Based on annual growth rate of 1.03% estimated based on countywide Santa Clara County growth projections from 2010 to 2035 from ABAG (2013).

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's library facility inventory, facility standards, and cost of planned facilities.

Table 5.2 summarizes the City's current inventory of library facilities, including land, building and collections.

Table 5.2: Existing Library Facilities

	Inventory	Units	Unit Cost ¹	Value
<u>Existing Library</u>				
Land (acres)	4.57	acres	\$ 790,000	\$ 3,610,300
Building	27,909	square feet	900	25,118,100
Collection	166,000	items	36	<u>5,976,000</u>
Total Value - Existing and Planned Library Facilities				\$ 34,704,400

¹ Building cost costs based on recent bid for library expansion project. Cost per item based on data from similar jurisdictions.

² Planned increases in collection based on maintaining ratio of building space to items.

Source: City of Morgan Hill.

Table 5.3 lists the planned library facilities: an expansion to the building and collections. The building cost of \$4.5 million differs from the City's CIP estimate of \$3.5 million because construction costs have risen dramatically since the CIP was published. \$4.5 million represents the City's most recent construction cost estimate for this facility.

Table 5.3: Planned Library Facilities

	Inventory	Units	Unit Cost ¹	Value
<u>Planned Expansion</u>				
Building	5,000	square feet	\$ 900	\$ 4,500,000
Collection ²	30,000	items	36	<u>1,080,000</u>
Total Cost - Planned Facilities				\$ 5,580,000

¹ Unit costs based on recent bid for library expansion project. Cost per item based on data from similar jurisdictions.

² Planned increases in collection based on maintaining ratio of building space to items.

Sources: City of Morgan Hill; Willdan Financial Services.

Cost Allocation

Table 5.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 5.4: Library Facilities Existing Standard

Value of Existing Facilities	\$	34,704,400
Existing Service Population		<u>54,760</u>
Facility Standard per Resident	\$	634

Sources: Tables 5.1 and 5.2.

Use of Fee Revenue

The City can use library facilities fee revenues to purchase land, buildings, collections and equipment that are part of the system of library facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 5.3.

Revenue Projection

The library facilities fee revenue exceeds the cost of the planned facilities. The City will have to identify additional library facilities through 2035 to maintain its existing facility standard. **Table 5.5** projects library fee revenue through 2035 based on the cost per capita from Table 5.4, and the service population growth projections in Table 5.1.

Table 5.5: Revenue Projection - Existing Standard

Cost per Capita	\$	634
City Growth in Service Population (2019- 2035)		<u>12,454</u>
Fee Revenue	\$	7,895,800
Net Cost of Planned Facilities		<u>5,580,000</u>
Future Facilities to Be Identified	\$	2,315,800

Sources: Tables 5.1, 5.3 and 5.4.

Fee Schedule

Table 5.5 shows the maximum justified library facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit densities (persons per dwelling unit). The total fee includes a two percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 5.6: Library Facilities Fee - Existing Standard

Land Use	A		B	C = A x B		D = C x 0.02	E = C + D
	Cost Per		Density	Admin		Total Fee	
	Capita			Base Fee ¹	Charge ^{1, 2}		
<u>Residential</u>							
Single Family	\$	634	3.02	\$ 1,915	\$ 38	\$ 1,953	
Multi-Family (Greater than 1,200 SF)		634	2.67	1,693	34	1,727	
Multi-Family (Less than 1,200 SF)		634	2.00	1,268	25	1,293	

¹ Fee per dwelling unit.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification

Sources: Tables 2.2 and 5.4.

6. Park Facilities

The purpose of this fee is to generate revenue to fund the park facilities needed to serve new development. The impact fee is based on the parkland standards found in the Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan (2017).

Service Population

Facility standards for parks are typically expressed as a ratio of park acres per 1,000 residents. As residents are the primary users of parks in the City of Morgan Hill, demand for parks and associated facilities is based on the City's residential population, rather than a combined resident-worker service population. **Table 6.1** provides estimates of the City's current resident population and a projection for the year 2035.

Table 6.1: Parks Service Population

	Residents
Existing (2019)	45,360
New Development (2019 - 2035)	12,454
Total (2035)	57,814

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's park facility inventory, facility standards, and park facility costs.

Existing Inventory

Table 6.2 summarizes the City's existing park and open space inventory. In addition to public parkland, there is also a significant amount of parkland and open space in the City that is privately owned and maintained. **Table 6.3** displays the privately-owned park and open space land in the City.

Table 6.2: Existing Parkland Inventory

	Developed Park Acres	Undeveloped Acres	Total Park/Open Space Acres
<u><i>Community Parks</i></u>			
Community Park	26.00	-	26.00
Galvan Park	7.50	-	7.50
Subtotal	33.50	-	33.50
<u><i>Neighborhood Parks</i></u>			
Diana Park	3.08	-	3.08
Jackson Park	1.30	-	1.30
Oak Creek Park	2.93	-	2.93
Nob Hill Trail Park	3.40	-	3.40
Nordstrom Park	4.57	-	4.57
Paradise Park	5.47	-	5.47
Railroad Park	1.10	-	1.10
Third Street Creek Park	1.10	-	1.10
Subtotal	22.95	-	22.95
<u><i>Mini Parks</i></u>			
21 Mile	0.65	-	0.65
Belle Estates Park	0.46	-	0.46
Civic Center	2.00	-	2.00
Conte Gardens Park	0.50	-	0.50
Diana Estates Park	0.50	-	0.50
Fox Hollow Park	0.20	-	0.20
Hamilton Square Park	0.57	-	0.57
Howard Weichert Park	0.90	-	0.90
Mill Creek Park	0.93	-	0.93
Murphy Springs Park	0.49	-	0.49
Sanchez Park	0.16	-	0.16
Stone Creek Park	0.95	-	0.95
Subtotal	8.31	-	8.31
<u><i>Community Recreation Facilities</i></u>			
Centennial Recreation Center	5.90	-	5.90
Community and Cultural Center	6.00	-	6.00
El Toro Youth Center	0.30	-	0.30
Aquatics Center	8.00	-	8.00
Outdoor Sports Center	38.00	-	38.00
Subtotal	58.20	-	58.20

Sources: City of Morgan Hill; City of Morgan Hill *Bikeways, Trails, Parks and Recreation Master Plan*, 2017.

Table 6.2: Existing Parkland Inventory Continued

	Developed Park Acres	Undeveloped Acres	Total Park/Open Space Acres
<u>Trails</u> ¹			
Butterfield Linear Park	2.09	-	2.09
San Pedro Percolation Ponds Trail	1.21	-	1.21
Madrone Channel Trail	6.00	-	6.00
West Llagas Creek Trail	1.10	-	1.10
Subtotal	10.40	-	10.40
<u>Open Space</u> ²			
El Toro	-	86.00	21.50
Jackson Oaks	-	170.00	42.50
Subtotal	-	256.00	64.00
<u>Joint Use Facilities</u> ³			
Villa Mira Monte	2.40	-	2.40
Subtotal	2.40	-	2.40
Total	135.76	256.00	199.76

¹ Area totals includes trail and landscaping adjacent to trail.

² According to the *Bikeways, Trails, Parks and Recreation Master Plan, 2017* only 25% of open space acreage counts towards the City's parkland standard.

³ The City has joint use agreements for these facilities.

Sources: City of Morgan Hill; City of Morgan Hill *City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017*.

Table 6.3: Private Parkland Inventory

HOA	Location	Park Acres	Open Space
			Acres
Alicante	Ventura Ct. & Ventura Dr.	2.00	-
Alicante	Espana Wy. & Katherine Dr.	0.60	-
Barrett Place	Barrett Ave. & Saint John Ct.	0.60	-
Brighton Oaks Community Association	Butterfield Blvd. & Main Avenue	-	0.21
Capriano	Curry Ave. & Hale Ave.	1.50	-
Carriage Square	East Main Ave. & Carriage Lamp Way	1.70	-
Central Park	East Central Ave & Calle Central	2.20	-
Central Park	Cil Hermosa & Calle Buena Vista	0.85	-
Cerro Verde HOA	Calle Mazatan & Main Ave.	-	0.40
Cerro Verde HOA	Central & Butterfield	-	0.20
Cerro Verde HOA	Calle Mazatan & Calle Cerro	0.30	-
Cerro Verde HOA	Calle Verde & CalleCerro	0.30	-
Cottage Green	San Pedro Ave. & San Ramon Dr.	0.70	-
Country Side Villas	Venetian Way and Shasta lane	0.25	-
Coyote Estates	Peet Rd. & Eagle View Dr.	0.70	-
Coyote Estates	Savanah Ct. & Morningstar Dr.	1.60	-
Creekside Village	E.Dunne Ave. & Creekside Cr.	2.10	-
Crescent Park	Belleto Dr. & Bentley Dr.	0.80	-
Del Monte Condominiums	Del mone Ave. & Del Monte Lane	0.85	-
Del Monte Village	Hale Ave & Del Monte Ave. (Private Road)	-	0.40
Diamond Creek	Rome Ave. and Monterey Road	-	0.25
Diamond Creek HOA	Valencia Avenue	-	-
East Dunne Park Owner's Association	Grapevine Ct. & Seville Drive	-	0.49
El Dorado	East Dunne Ave. & Tassajara Cir.	0.20	-
El Toro Oaks	Oak Park Drive and Dewitt Ave.	0.50	-
Esperanza Community Association	Diana Avenue & Cayman Street	0.74	0.07
Excalibur	Excaliber Court	-	0.60
Grand Prix / Calle Siena	Grande Prix Way \$ Calle Siena	0.95	-
Heatherwood HOA	Katybeth & Heatherwood	-	0.10
Heritage Greens	East Dunne Ave & Saddleback Dr.	0.60	-
Hidden Meadow Condos	Viewcrest Lane & Dunne Ave	-	0.50
Hillwood Lane	Hillwood Lane and Hale (behind houses)	-	3.25
Holiday Lake Estates	Btwn Holiday Dr & Copper Hill Dr	-	11.85
Jackson Oaks Clubhouse	390 Oak Hill Ct.	0.90	5.50
Jasper Park	Cory Dr. & San Benancio Way	0.80	-
Kelly Park Circle	Kelly Park Cr. & Murphey Ave	0.25	-
Kendall Hill	Denali Drive and Olympic Drive	0.45	-
Las Casas de San Pedro Condominiums	San Pedro Ln. & San Pedro Ave.	0.80	-
Laurel Oaks	San Marcos Ct. & San Ramon Dr.	0.40	-
Loan Oaks Farms	San Gabriel Ave. & San Vincent Dr.	0.85	-
Loden Place Community Corporation	Stoney Creek Way and Hale Avenue	0.29	0.47
Lone Oak Farm HOA	San Domingo Drive & San Meguel Drive	0.24	0.11
Madrone Parkway Retention Area	Madrone Pkwy. & Buttefield Blvd.	-	10.00
Madrone Plaza	Opal Ln. & Jarvis Dr	0.90	-
Milano	Murpphy Ave. & Mimosa Drive	1.10	-
Mission Ranch	Capastrano Wy. & San Antonio Wy.	2.80	-
Mission Ranch	Cochrane Rd. & Mission View Ave.	2.20	-
Mission Ranch (Phase 13)	Mission View Drive & Avenida Del Los Padres	8.92	0.50
Monte Villa	Llagas Rd. & Carriage Dr.	-	0.35
Montoya Circle	East Main Ave. & Mariposa Dr.	0.80	-
Morgan Hill Ranch Apartments	Cochrane Rd. & Butterfield Blvd.	0.50	-
Morgan Lane Phase 1	Central Ave. & Aston Ct.	4.20	-
Morgan Meadows	East Dunne Ave. & Hill Rd.	-	0.60
Morgan Meadows	Domaine Dr. & Cabernet Cr.	2.30	-

Source: City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017.

Table 6.3: Private Parkland Inventory - Continued

HOA	Location	Park Acres	Open Space Acres
Morgan Meadows	Malbek Dr. & Merlot Dr.	0.75	-
Morgan Ranch	East Dunne Ave. & Bayo Claros	2.25	-
Morgan Village	East Dunne Ave & Brega Lane	1.85	-
Park Place Condominiums	LaCrosse Drive and Village Way	0.40	-
Parkside at Capriano	Corriander Ave & Basil Ave.	1.40	-
Pear Tree Estates	Pear Dr. & Jean Ct.	0.75	-
Pine Tree Park	Olympia Drive and Bryce Drive	0.50	-
Pine Tree Park	Sugarpine Dr. & Pinecone Ct.	0.25	-
Quail Creek	Via Vivaldi and Santa Teresa Blvd	1.00	-
Quail Meadows	Secretariat Way	-	0.50
Rio Sereno	Calle Sueno and Via Narretto	0.20	-
Rooyal Court Apartments	Del Monte Ave. & Wright Ave.	0.30	-
Royal Court	Wright Ave. & Del Monte Ave.	-	0.20
San Benito and San Pablo	San Benito Pl. and San Pablo Ct.	0.45	-
San Gabriel Court	San Gabriel Court	0.60	-
San Pedro Gardens	Cory Dr. & San Pedro Ave.	0.45	-
San Pedro Gardens	Cory Dr. & San Pedro Ave.	0.25	-
San Pedro Villas	San Jose Dr & San Juan Dr	1.90	-
San Savigno	Bel Air Way	-	0.50
San Savigno	S side Main btw Calle Mazatan & Grand Prix	-	0.15
San Savigno	Calle Asta & Bell Air Way	0.60	-
Shadow Brooks Estates	Shadowbrook Wy & Llagas Creek Dr.	2.00	-
Sherial Park	Jarvis Dr. & Sutter Blvd.	0.48	-
Sherimar Ranch	Jasmine Way & Bradford Way	2.40	-
Siera Ct	Llagas Rd. & Siera Ct.	0.50	-
Sonora Ranch	Peppertree & East Dunne Ave	0.25	-
Sorrento	Via Sorrento and Watsonville Road	0.25	-
St James Place	St. Timothy Pl. and St. Lawrence Dr.	1.75	-
Stonebridge Neighborhood Association	Hale Ave & Clove Avenue	3.06	4.69
Tilton Park Owner's Associatioin	Tilton Avenue & Monterey Road	2.56	0.15
Tuscany Meadows	Shafer Ave. & Katybeth Way	1.00	-
Twin Oaks	Llagas Creek Dr. & ril Marianna Dr.	-	0.60
Ventura of Morgan Hill Home Owners	Cochrane Road & St. Mark's Avenue	-	0.84
Viento	Calle Viento & Calle Viento Ct.	1.30	-
Village Avante Apartments	Cosmo Dr. & Del Monte Ave.	0.50	-
Walnut Grove	San Pedro Ave. & Walnut Grove	-	1.00
Westmoreland Park	Piazza Way	0.25	-
Total		78.93	44.47

Source: City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017.

Parkland Unit Costs

Table 6.4 shows the estimated cost per acre for parkland. Land acquisition costs are consistent with those used throughout this study. Improvement costs are based on cost estimates provided in the City of Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan (2017). The cost per acre is based on assumed community park improvement costs from Master Plan of \$8,000,000 for the improvement of 10 acres.

Table 6.4: Parkland Unit Costs

	Cost per Acre	Share of Parkland Costs
Standard Park Improvements ¹	\$ 800,000	50%
Land Acquisition	790,000	50%
Total Cost per Acre	\$1,590,000	100%

Note: Figures have been rounded.

¹ Based on assumed community park improvement costs from Master Plan @ \$8,000,000 for the improvement of 10 acres.

Sources: City of Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan, 2017, Table 5-3; Willdan Financial Services.

Park Facility Standards

The Master Plan sets forth park facility standards for the City. The Master Plan specifies a Citywide park standard of 5.0 acres per thousand residents. Per the Master Plan, private parkland counts towards the standard, but only at 50% of total acreage. Open space acreage is counted towards the standard, but only at 25% of total acreage. Private open space is not included in the calculation of the standard. The City's existing parkland facilities standard exceeds the standard recommended by the Master Plan.

Table 6.5 shows the existing parkland standards based on including discounted private parks and open space as described above. As shown, the City currently provides park facilities above the Master Plan standard, with no deficiencies. Impact fees cannot fund private parks, and the City does not intend to use impact fee revenue to purchase future open space. As such park standards are shown three ways:

- Existing Master Plan Standard: Calculated including discounted private parks and open space.
- Existing Parks Standard (Impact Fee): Calculated only including public parkland
- Existing Other Parks Standard: Calculated only including discounted open space, and discounted private parks.

Table 6.5: Parkland Standards

Type of Acreage	Total Developed Acreage	Total Undeveloped Acreage	Existing Master Plan Standard ¹	Existing Parks Standard (Impact Fees) ²	Existing Other Parks Standard
Community Parks	33.50	-	33.50	33.50	-
Neighborhood Parks	22.95	-	22.95	22.95	-
Mini Parks	8.31	-	8.31	8.31	-
Community Recreation Facilities	58.20	-	58.20	58.20	-
Trails	10.40	-	10.40	10.40	-
Schools	2.40	-	2.40	2.40	-
Open Space	-	256.00	64.00	-	64.00
Private Parkland	78.93	-	39.47	-	39.47
Private Open Space	44.47	-	-	-	-
Total	259.16	256.00	239.23	135.76	103.47
Current Population			45,360	45,360	45,360
Standard			5.27	2.99	2.28

¹ The Master Plan recommends a citywide (including public and private) parks standard of 5.0 acres per 1,000 population. Per the Master Plan, private parkland counts towards the standard, but only at 50% of total acreage. Open space acreage is counted towards the standard, but only at 25% of total acreage. Private open space is not included in the calculation of the standard. The City's existing parkland facilities standard exceeds the standard recommended by the Master Plan.

² For the purposes of calculating a parks standard to base impact fees on, only publicly owned parkland is included. Open space, and privately owned parkland are excluded from the standard. It is assumed that the existing ratio of public to private parkland will be maintained through the planning horizon as additional private parkland is added.

Sources: City of Morgan Hill; Tables 6.1 - 6.4, Willdan Financial Services.

Facilities Needed to Accommodate New Development

Table 6.6 shows the park facilities needed to accommodate new development at the “impact fee” standard. To achieve the General Plan standard by the planning horizon, new development must fund the improvement of existing undeveloped parkland, and fund the purchase and development of 37.24 additional parkland acres. The existing park impact fee fund balance is \$2,787,306. This fund balance is converted into equivalent developed acres and credited against the total parkland needs. As such, the City only needs to develop 35.49 acres of parkland to achieve the desired standard at the planning horizon. This translates to the need for new development to contribute at a standard of 2.85 acres per 1,000 residents through this impact fee.

Table 6.6: Parkland Facility Needs

	Calculation	Amount	Unit
Existing City Owned Park Standard	A	2.99	Acres per 1,000 Capita
Growth in Service Population	B	12,454	Residents
Acres needed at Buildout to Maintain Standard	$C = A \times (B / 1,000)$	37.24	Acres
Existing Fund Balance	D	\$2,787,306	
Cost per Acre (Land and Improvements)	E	1,590,000	
Fund Balance Developed Park Acreage Equivalent ¹	$F = D / E$	1.75	Acres
Net Developed Parkland Needs	$G = C - F$	35.49	Acres
Growth in Service Population	H	12,454	Residents
Acres per 1,000 new residents needed to achieve standard	$I = G / (H / 1,000)$	2.85	Acres per 1,000 Capita

¹ Existing fund balance converted to equivalent developed park acreage by dividing fund balance by the cost per developed park acre developed in Table 6.4 (\$1,590,000).

Sources: Tables 6.1, 6.4 and 6.5; Willdan Financial Services.

Table 6.7 shows the calculation of the cost of purchasing and improving 35.49 acres. This cost is approximately \$56.4 million through 2035.

Table 6.7: Cost of Planned Parkland Facilities Needs

	Calculation	Total
Acres needed to meet Standard	A	35.49
Cost per acre - Land	B	\$ 790,000
Cost per acre - Improvements	C	800,000
Total Parkland and Improvement cost Per Acre	$D = B + C$	\$ 1,590,000
Land Needs	$E = A \times B$	\$ 28,037,000
Improvements Needs	$F = A \times C$	28,392,000
Net Cost of Planned Park Facilities to Serve New Development	$G = E + F$	\$ 56,429,000

Sources: Tables 6.6 and 6.4; Willdan Financial Services.

Parks Cost per Capita

Table 6.8 shows the cost per capita of providing new parkland and park facilities at a 2.95 acre per 1,000 capita facility standard. The per acre unit costs are multiplied by the acreage standards to determine the total amount of costs needed to serve 1,000 residents for each type of parkland, respectively. Then, those costs are divided by 1,000 to determine the cost needed to serve one resident.

Table 6.8: Park Improvements Cost per Capita

Parkland Investment Cost (per acre)	\$ 1,590,000
Facility Standard (acres per 1,000 residents)	2.85
Total Investment Per 1,000 capita	\$ 4,532,000
Investment Per Resident	\$ 4,532

Sources: Tables 6.6, and 6.8; Willdan Financial Services.

Use of Fee Revenue

The City plans to use park facilities fee revenue to acquire parkland and construct improvements to add to the system of park and recreation facilities that serves new development. The City may only use impact fee revenue to provide facilities needed to serve new development. The City may not use impact fee revenue for the portion of park facilities needed to meet the Master Plan standards for private parkland.

Fee Schedule

Table 6.9 shows the maximum justified park facilities fee schedule. The maximum justified fees are based on the costs per capita shown in Table 6.8. The cost per capita is converted to a fee per unit of new development based on the average number of residents per dwelling unit, as shown in Table 2.2. The total fee includes a two percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 6.9: Park Facilities Fee Schedule

Land Use	A		B		C = A x B		D = C x 0.02		E = C + D	
	Cost per Capita		Density		Base Fee		Admin Charge ¹		Total Fee	
Single Family	\$	4,532		3.02	\$	13,687	\$	274	\$	13,961
Multi-Family (Greater than 1,200 SF)		4,532		2.67		12,100		242		12,342
Multi-Family (Less than 1,200 SF)		4,532		2.00		9,064		181		9,245

¹ Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Sources: Tables 2.2 and 6.8; Willdan Financial Services.

7. Water Facilities

This chapter summarizes an analysis of the need for water facilities to accommodate growth within the City of Morgan Hill. It documents a reasonable relationship between new development and an impact fee to fund water facilities that serve new development.

Water Demand

Estimates of new development and its consequent increased water demand provide the basis for calculating the water facilities fee. The need for water facilities improvements is based on the water demand placed on the system by development. A reasonable measure of demand is a flow generation rate, expressed as the number of gallons per day generated by a specific type of land use. Flow generation rates are a reasonable measure of demand on the City's system of water improvements because they represent the average rate of demand that will be placed on the system per land use designation.

Table 7.1 shows the calculation of water demand flow generation factors by land use category. The data is based the *City of Morgan Hill Water System Plan (2017)*. Water demand for a given land use is related to the demand for a single-family unit to calculate equivalent dwelling units (EDU).

Table 7.1: Water Demand by Land Use

Land Use Type	Flow Generation (GDP/NA) ¹	Density ²	Average Flow Generation/ DU, KSF, Room	Equivalent Dwelling Unit (EDU)
<u><i>Residential</i></u>				
Single Family	1,266	5.00	253.20	1.00
Multi-Family (Greater than 1,200 SF)	1,856	16.00	116.00	0.46
Multi-Family (Less than 1,200 SF)	3,130	35.00	89.43	0.35
<u><i>Nonresidential</i></u>				
Commercial	1,350	21.78	61.98	0.24
Office	1,350	21.78	61.98	0.24
Industrial	1,120	26.14	42.85	0.17
Auto Dealership	1,350	21.78	61.98	0.24
Hotel	1,350	67.02	20.14	0.08

¹ Gallons per day per net acre.

² Dwelling units per acre for residential, thousand square feet per acre for nonresidential or hotel rooms per acre. Nonresidential based upon the maximum floor area ratio (FAR) assumption of 0.5 for commercial, 0.5 for office, 0.6 for industrial, 0.5 for auto dealership, and 0.5 for hotel.

Sources: City of Morgan Hill General Plan 2035, Table CNF-2; City of Morgan Hill Water System Master Plan, 2017, Table 3.4; Willdan Financial Services.

Equivalent Dwelling Unit Growth

Table 7.2 calculates the existing and projected equivalent dwelling units (EDU) based on each land use's water demand factors displayed in Table 7.1. An equivalent dwelling unit represents the demand of all other land uses equivalent to one single family unit. Also displayed is the total existing and future EDUs for water facilities by land use.

Table 7.2: Water Facilities Equivalent Dwelling Units

	EDU Factor ¹	Existing (DU/KSF)	Projected Growth (DU/KSF)	Existing EDUs	Growth in EDUs	Total
<u><i>Residential</i></u>						
Single Family	1.00	11,598	1,572	11,598	1,572	13,170
Multi-Family (Greater than 1,200 SF)	0.46	2,407	2,287	1,107	1,052	2,159
Multi-Family (Less than 1,200 SF)	0.35	1,100	800	385	280	665
Subtotal		15,105	4,659	13,090	2,904	15,994
<u><i>Nonresidential</i></u>						
Commercial ²	0.24	2,610	1,117	626	268	894
Office	0.24	522	629	125	151	276
Industrial	0.17	5,935	1,780	1,009	303	1,312
Auto Dealership	0.24	120	56	29	13	42
Hotel	0.08	919	215	74	17	91
Subtotal		10,106	3,797	1,863	752	2,615
Total				14,953	3,656	18,609
Percent of Total				80.4%	19.6%	100.0%

¹ Per dwelling unit (residential) or thousand building square feet (nonresidential), or hotel room.

Sources: Tables 2.1 and 7.1, Willdan Financial Services.

Facility Needs and Costs

The City recently completed a water system master plan that identified necessary improvements to its water system. The Morgan Hill Water System Master Plan (2017) also identified the share of improvements needed to serve existing development, and the share needed to serve new development. **Table 7.3** lists the water projects, costs and allocation to existing and new development, based on Table ES.3 of the Master Plan.

Table 7.3: Costs to Serve New Development

Improv. No.	Pressure Zone	Alignment	Limits	Baseline Constr. ¹ Costs	Estimated Const. Costs ²	Capacity Improv. Cost ³	Allocation			
							Existing Users (%)	Future Users (%)	Existing Users (\$)	Future Users (\$)
Pipeline Improvements										
BR-P1	Boys Ranch	ROW	Cochrane Rd to Coyote Rd	\$ 354,806	\$ 461,248	\$ 599,623	0%	100%	\$ -	\$ 599,623
BR-P2	Boys Ranch	Cochrane Rd	Half Rd to approx 1,700' n/o Half Rd	376,982	490,077	637,100	0%	100%	-	637,100
BR-P3	Boys Ranch	Half Rd	Mission View Dr to Peet Rd	770,433	1,001,563	1,302,032	0%	100%	-	1,302,032
BR-P4	Boys Ranch	Mission View Dr	Between Cochrane Rd and 2,100' nw/o Cochrane Rd	99,789	129,726	168,644	100%	0%	168,644	-
BR-P5	Boys Ranch	Mission View Dr	Half Rd to 2,100' nw/o Half Rd	513,621	667,708	868,020	0%	100%	-	868,020
BR-P6	Boys Ranch	Half Rd	Serene Dr to Conduit Rd	403,560	524,627	682,016	0%	100%	-	682,016
NH-P1	Nob Hill	Hale Ave Extension	Spring Ave to Main Ave	1,112,847	1,446,702	1,880,712	100%	0%	1,880,712	-
NH-P2	Nob Hill	Spring Ave	Del Monte Ave to Monterey Rd	182,784	237,619	308,905	100%	0%	308,905	-
NH-P3	Nob Hill	San Pedro Ave	Butterfield Blvd to Railroad Ave	162,321	211,017	274,322	100%	0%	274,322	-
NH-P4	Nob Hill	Railroad Ave	San Pedro Ave to approx 600' n/o Mast St	103,295	134,284	174,569	0%	100%	-	174,569
NH-P5	Nob Hill	Railroad Ave	Approx 600' n/o Mast St to Mast St	177,077	230,200	299,260	0%	100%	-	299,260
NH-P6	Nob Hill	San Pedro Ave	Peppertree Dr to Hill Rd	709,613	922,497	1,199,246	0%	100%	-	1,199,246
NH-P7	Nob Hill	Hill Rd	San Pedro Ave to Tennant Ave	731,788	951,325	1,236,723	0%	100%	-	1,236,723
NH-P8	Nob Hill	Tennant Ave	Hill Rd to Conduit Rd	1,075,507	1,398,159	1,817,607	0%	100%	-	1,817,607
NH-P9	Nob Hill	Monterey Rd	John Wilson Way to Middle Ave	521,122	677,458	880,696	0%	100%	-	880,696
NH-P10	Nob Hill	ROW	Monterey Rd to Olive Ave	598,737	778,358	1,011,865	0%	100%	-	1,011,865
RP-7	Nob Hill	First St	From Monterey Rd to Depot St	102,616	133,400	173,420	100%	0%	173,420	-
HL-P1	Holiday 1	Dunne Ave	Flaming Oak Ln to Proposed E Dunne Tank	162,321	211,017	274,322	40%	60%	109,729	164,593
HL-P2	Holiday 1	Dunne Ave	Proposed E Dunne Tank to Flaming Oak Ln	134,519	174,875	227,338	40%	60%	90,935	136,403
HL-P3	Holiday Lake	Dunne Ave	Proposed E Dunne Tank to Flaming Oak Ln	599,225	778,993	1,012,690	0%	100%	-	1,012,690
HL-P4	Holiday Lake	Oak Leaf Dr	Dunne Ave to 650' w/o Lori Dr	562,538	731,299	950,689	0%	100%	-	950,689
HL-P5	Holiday Lake	Lake View Dr	Oak Leaf Dr to Holiday Lake Tanks	697,058	906,176	1,178,029	0%	100%	-	1,178,029
RP-1	Holiday Lake	Shady Ln	From Holiday Dr to Holiday Dr	436,116	566,951	737,037	100%	0%	737,037	-
RP-4	Holiday Lake	Holiday Tank Site	From Holiday Lake Tanks to Manzanita Dr	153,923	200,100	260,131	100%	0%	260,131	-
RP-5	Holiday Lake	Manzanita Dr	From Holiday Dr to end of Manzanita Dr	282,193	366,851	476,906	100%	0%	476,906	-
RP-6	Holiday Lake	Raccoon Ct	From Holiday Ct to end of Manzanita Dr	290,744	377,968	491,358	100%	0%	491,358	-
RP-2	Jackson Oaks	Hill Top Ct	From Jackson Oaks Dr to approx 550' ne/o Jackson Oaks Dr	105,822	137,569	178,840	100%	0%	178,840	-
RP-3	Jackson Oaks	Oak View Ct	From Jackson Oaks Dr to approx 700' s/o Jackson Oaks Dr	134,683	175,088	227,614	100%	0%	227,614	-
RP-8	Hydropneumatic Zone	Oak Canyon Dr	From Jackson Oaks Hydropneumatic tank to Jackson Oaks Dr	115,443	150,075	195,098	100%	0%	195,098	-
Subtotal				\$ 11,671,486	\$ 15,172,932	\$ 19,724,811			\$ 5,573,652	\$ 14,151,159

¹ Cost estimates are adjusted to June 2019 costs based on the Engineering News's Record (ENR) construction cost index (CCI).

² Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

³ Estimated construction costs plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Water System Master Plan, 2017, Table ES.3; Engineering News's Record, Construction Cost Index; Willdan Financial Services.

Table 7.3: Costs to Serve New Development Continued

Improv. No.	Pressure Zone	Alignment	Limits	Baseline Constr. ¹ Costs	Estimated Const. Costs ²	Capacity Improv. Cost ³	Allocation			
							Existing Users (%)	Future Users (%)	Existing Users (\$)	Future Users (\$)
<u>Storage Reservoir Improvements</u>										
BR-T1	Boys Ranch	Demolish existing 0.55 MG Boys Ranch tank and replace with 1.20 MG tank		\$ 2,205,608	\$ 2,867,290	\$ 3,727,477	30%	70%	\$ 1,118,243	\$ 2,609,234
GA-T1	Glen Ayre	Demolish existing 0.10 MG Glen Ayre tank and replace with 0.25 MG tank		574,377	746,690	970,697	80%	20%	776,558	194,139
ED-T1	Nob Hill	Existing Edmundson tank site		2,067,758	2,688,085	3,494,510	0%	100%	-	3,494,510
WD-T1	Woodland	Demolish existing 0.03 MG Woodland tank and replace with 0.25 MG tank		574,377	746,690	970,697	70%	30%	679,488	291,209
HL-T1	Holiday 1	Dunne Ave approx 500' ne/o Flaming Oak Ln		<u>1,952,883</u>	<u>2,538,747</u>	<u>3,300,371</u>	40%	60%	<u>1,320,149</u>	<u>1,980,223</u>
Subtotal				\$ 7,375,002	\$ 9,587,503	\$ 12,463,754			\$ 3,894,438	\$ 8,569,316
<u>Groundwater Well Improvements</u>										
BR-W1	Boys Ranch	Burnett Ave	Approx 6,000' ne/o Monterey Ave	\$ 2,501,256	\$ 3,251,633	\$ 4,227,123	0%	100%	\$ -	\$ 4,227,123
NH-W2	Nob Hill	Butterfield Blvd	400' E of Railroad Ave and Fisher Ave	<u>2,501,256</u>	<u>3,251,633</u>	<u>4,227,123</u>	0%	100%	-	<u>4,227,123</u>
Subtotal				\$ 5,002,512	\$ 6,503,266	\$ 8,454,246			\$ -	\$ 8,454,246
<u>Pump Station Improvements</u>										
NH-PS1	Nob Hill	Dunne Ave and Magnolia Wy		\$ 1,390,157	\$ 1,807,203	\$ 2,349,365	40%	60%	\$ 939,746	\$ 1,409,619
HL-PS1	Holiday 1	Dunne Ave approx 500' ne/o Flaming Oak Ln		<u>1,190,199</u>	<u>1,547,259</u>	<u>2,011,437</u>	90%	10%	<u>1,810,293</u>	<u>201,144</u>
Subtotal				\$ 2,580,356	\$ 3,354,463	\$ 4,360,801			\$ 2,750,039	\$ 1,610,762
<u>Pressure Reducing Valve Improvements</u>										
HL-PRV1	Holiday 1	Thomas Gr approx 1,100' w/o Gnarled Oak Ln		\$ 50,560	\$ 65,727	\$ 85,446	40%	60%	\$ 34,178	\$ 51,267
Subtotal										
<u>Comprehensive Plan Updates</u>										
Water System Master Plan Updates (Years 2021, 2026, 2031, 2036)				\$ -	\$ -	\$ 800,000	65%	35%	\$ 520,000	\$ 280,000
Urban Water Management Plan Updates (Years 2021, 2026, 2031, 2036)				-	-	400,000	65%	35%	260,000	140,000
Water Rate Study Updates (Years 2021, 2026, 2031, 2036)				<u>-</u>	<u>-</u>	<u>400,000</u>	65%	35%	<u>260,000</u>	<u>140,000</u>
Subtotal				\$ -	\$ -	\$ 1,600,000			\$ 1,040,000	\$ 560,000
Total				\$ 26,679,916	\$ 34,683,890	\$ 46,689,058			\$ 13,292,307	\$ 33,396,751

¹ Cost estimates are adjusted to June 2019 costs based on the Engineering News Record (ENR) construction cost index (CCI).

² Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

³ Estimated construction costs plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Water System Master Plan, 2017, Table ES.3; Engineering News Record, Construction Cost Index; Willdan Financial Services.

Table 7.4 calculates a cost per EDU associated by dividing the total cost of projects allocated to new development identified in Table 7.3, by the growth in EDUs identified in Table 7.2

Table 7.4: Cost per EDU

Cost Allocated to New Development	\$33,396,751
Growth in EDUs	3,656
Cost per EDU	\$ 9,135

Sources: Tables 7.2 and 7.3.

Fee Schedule

The maximum justified fee for water facilities is shown in **Table 7.5**. The cost per EDU is converted to a fee per unit of new development based on the EDU factors shown in Table 7.1. The total fee includes an administrative charge to fund costs that include: (1) a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, (2) capital planning, programming, project management costs associated with the share of projects funded by the facilities fee, and (3) fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Table 7.5: Water Facilities Impact Fee

	A	B	C = A x B D = C x 0.02		E = C + D	E / 1,000	F	G = E x F
	Cost Per EDU	EDU Factor	Base Fee ¹	Admin Charge ^{1, 2}	Total Fee ¹	Fee per Sq. Ft.	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 9,135	1.00	\$ 9,135	\$ 183	\$ 9,318			
Multi-Family (Greater than 1,200 SF)	9,135	0.46	4,202	84	4,286			
Multi-Family (Less than 1,200 SF)	9,135	0.35	3,197	64	3,261			
<u>Nonresidential</u>								
Commercial	\$ 9,135	0.24	\$ 2,192	\$ 44	\$ 2,236	\$ 2.24	21.78	\$48,700
Office	9,135	0.24	2,192	44	2,236	2.24	21.78	48,700
Industrial	9,135	0.17	1,553	31	1,584	1.58	26.14	41,406
Auto Dealership	9,135	0.24	2,192	44	2,236	2.24	21.78	48,700
Hotel	9,135	0.08	731	15	746	0.75	n/a	n/a

¹ Fee per dwelling unit or per 1,000 square feet of nonresidential or hotel room.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio (FAR) from the General Plan. FAR for commercial, office and auto dealerships assumed to be 0.5 based on the "General Commercial" land use. FAR for Industrial assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 7.1 and 7.4; Willdan Financial Services.

8. Storm Drain Facilities Fee

This chapter summarizes an analysis of the need for storm drain facilities to accommodate growth within the City of Morgan Hill. It documents a reasonable relationship between new development and a storm drain fee to fund storm drain facilities that serve new development.

Storm Drain Demand

Most new development generates storm water runoff. This runoff must be controlled through storm drain facilities. Storm drain demand is measured by impervious surface. The more impervious surface a land use creates, the more demand for storm drain facilities it creates. **Table 8.1** shows the calculation of equivalent dwelling unit (EDU) demand factors for storm drain facilities based on impervious surface area by land use category. Dwelling unit and thousand square feet per acre assumptions are from the City's General Plan. The area percent impervious factors are derived from the September 2018 *Storm Drainage System Master Plan*, by Akel Engineering Group, Inc.

Table 8.1: Equivalent Dwelling Units

	A	B	$C = (43,560 / A) \times B$	$D = C / \text{Single Family}$
	DU, KSF or Rooms per acre ¹	Average Percent Impervious per Acre	Impervious Square feet per DU, KSF or Room	Equivalent Dwelling Unit (EDU) ²
<i>Residential</i>				
Single Family ³	5.00	35%	3,049	1.00
Multi-Family (Greater than 1,200 SF) ³	16.00	80%	2,178	0.71
Multi-Family (Less than 1,200 SF) ³	35.00	80%	996	0.33
<i>Nonresidential</i>				
Commercial	21.78	95%	1,900	0.62
Office	21.78	95%	1,900	0.62
Industrial	26.14	70%	1,167	0.38
Auto Dealership ⁴	21.78	95%	1,900	0.62
Hotel ⁴	67.02	95%	618	0.20

Note: Figures have been rounded.

¹ Dwelling units for residential and thousand building square feet for non-residential. Density based on estimated development and acreage for each land use type in the City of Morgan Hill *General Plan*. Nonresidential densities are based on floor-area-ratios of 0.5 for commercial, office, hotel and auto dealerships, 0.6 for industrial.

² EDUs per dwelling unit for residential development and per thousand square feet for nonresidential development.

³ Percent impervious for single family based on the "Single Family Medium" land use category from the *Storm Drainage System Master Plan*. Multi-Family based on "Multi-Family Medium."

⁴ Percent impervious for auto dealership and hotel based on the "Commercial" land use category from *Storm Drainage System Master Plan*.

Sources: *Storm Drainage System Master Plan*, Akel Engineering Group, Inc., September 2018; Morgan Hill General Plan; Willdan Financial Services.

Equivalent Dwelling Unit Growth

Table 8.2 calculates the existing and projected equivalent dwelling units (EDU) based on each land use's demand factors displayed in Table 8.1. An equivalent dwelling unit represents the demand of all other land uses equivalent to one single family unit. Also displayed is the total existing and future EDUs for storm drain facilities by land use.

Table 8.2: Storm Drain Facilities Equivalent Dwelling Units

EDU Factor ¹	----- DU or KSF-----		----- EDU -----		
	Existing	Projected Growth	Existing	Growth	Total
<u><i>Residential</i></u>					
Single Family	1.00	11,598	1,572	11,598	13,170
Multi-Family (Greater than 1,200 SF)	0.71	2,407	2,287	1,709	3,333
Multi-Family (Less than 1,200 SF)	0.33	1,100	800	363	627
Subtotal		15,105	4,147	13,670	17,130
<u><i>Nonresidential</i></u>					
Commercial	0.62	2,610	1,117	1,618	2,311
Office	0.62	522	629	324	714
Industrial	0.38	5,935	1,780	2,255	2,931
Auto Dealership	0.62	120	56	74	109
Subtotal		9,187	3,582	4,271	6,065
Hotel Rooms	0.20	919	215	184	227
Total				18,125	5,297
Percent of Total				77%	23%
					100%

¹ Per dwelling unit (residential), thousand building square feet (nonresidential), or hotel room.

Sources: Tables 2.2 and 8.1, Willdan Financial Services.

Planned Facilities

The City of Morgan Hill had the September 2018 *Storm Drainage System Master Plan*, completed by Akel Engineering Group, Inc. The plan identified storm drain projects, and allocated shares of each project to existing and new development. **Table 8.3** shows the storm drain capital improvement plan and cost allocation for storm drain facilities from the *Storm Drainage System Master Plan*.

Table 8.3: Storm Drain Master Plan Improvements

				Allocation						
	Type of			Baseline	Estimated	Capital	Existing	Future	Existing	
No.	Improvement	Description/Street	Description/Limits	Constr.	Const.	Improv.	Users	Users	Users	Future Users
				Costs	Costs ¹	Cost ²	(%)	(%)	(\$)	(\$)
Butterfield Drainage Basin										
BTR-P1	Pipeline	Juan Hernandez Dr	From 150' s/o Saint James Dr to Tennant Ave	\$ 214,401	\$ 278,722	\$ 362,338	0%	100%	\$ -	\$ 362,338
Subtotal				\$ 214,401	\$ 278,722	\$ 362,338			\$ -	\$ 362,338
Coyote Drainage Basin										
COY-P1	Pipeline	Eagle View Dr	From 310' s/o Peet Rd to Peet Rd	\$ 99,302	\$ 129,092	\$ 167,820	0%	100%	\$ -	\$ 167,820
COY-P2	Pipeline	Eagle View Dr	From 1,400 ft s/o Peet Rd to 310' s/o Peet Rd	300,162	390,211	507,274	0%	100%	-	507,274
COY-P3	Pipeline	Peet Rd	From Eagle View Dr to Morningstar Dr	364,106	473,338	615,340	100%	0%	615,340	-
Subtotal				\$ 763,570	\$ 992,641	\$ 1,290,434			\$ 615,340	\$ 675,094
Madrone Drainage Basin										
MAD-P1	Pipeline	Half Rd	From Condit Rd to NB US 101	\$ 174,530	\$ 226,889	\$ 294,956	0%	100%	\$ -	\$ 294,956
MAD-P2	Pipeline	Half Rd	From Peet Rd to Condit Rd	958,412	1,245,936	1,619,716	0%	100%	-	1,619,716
MAD-P3	Pipeline	Dunne Ave	From Condit Rd to NB US 101	180,549	234,713	305,127	100%	0%	305,127	-
MAD-P4	Pipeline	Aspen Wy	From Bluebonnet Wy to Pine Wy	128,641	167,233	217,403	100%	0%	217,403	-
MAD-P5	Pipeline	Bluebonnet Ct	From Almond Wy to Percheron Ct	39,119	50,855	66,111	100%	0%	66,111	-
MAD-P6	Pipeline	Percheron Ct	From Bluebonnet Ct to 170' s/o Bayo Claros Cir	252,768	328,598	427,178	100%	0%	427,178	-
MAD-P7	Pipeline	San Pedro Ave	From Condit Rd to NB US 101	195,594	254,273	330,554	60%	40%	198,332	132,222
Subtotal				\$ 1,929,613	\$ 2,508,497	\$ 3,261,045			\$ 1,214,151	\$ 2,046,894
Little Llagas Drainage Basin										
LLL-P1	Pipeline	Wright Ave	From Monterey Rd to Hale Ave	\$ 414,509	\$ 538,862	\$ 700,521	50%	50%	\$ 350,261	\$ 350,261
LLL-P2	Pipeline	Wright Ave	From 450' sw/o Crest Ave to Hale Ave	276,841	359,893	467,862	50%	50%	233,931	233,931
LLL-P3	Pipeline	Main Ave	From Crest Ave to Hale Ave	234,713	305,127	396,665	50%	50%	198,333	198,333
LLL-P4	Pipeline	Main Ave	From Peak Ave to Crest Ave	248,254	322,731	419,550	50%	50%	209,775	209,775
LLL-P5	Pipeline	Del Monte Ave	From Main Ave to 2nd St	214,401	278,722	362,338	50%	50%	181,169	181,169
LLL-P6	Pipeline	Main Ave	From Del Monte Ave to Monterey Rd	200,108	260,140	338,183	50%	50%	169,092	169,092
LLL-P7	Pipeline	Lone Hill Dr	From Spring Ave to Chargin Wy	168,512	219,066	284,785	20%	80%	56,957	227,828
LLL-P8	Pipeline	La Crosse Dr	From La Barea Dr to 200' se/o intersection of the Vineyard Blvd and La Crosse Dr	546,159	710,007	923,009	100%	0%	923,009	-
LLL-P9	Pipeline	Alamo Dr	From La Rocca Dr to 80' n/o Unnamed St	385,923	501,699	652,209	100%	0%	652,209	-
Subtotal				\$ 2,689,420	\$ 3,496,247	\$ 4,545,122			\$ 2,974,735	\$ 1,570,388

¹ Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.² Estimated construction cost plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Storm Drainage Master Plan, 2018, Table ES.3; Engineering News Record; Willdan Financial Services.

Table 8.3: Storm Drain Master Plan Improvements - Continued

				Allocation						
	Type of			Baseline	Estimated	Capital	Existing	Future	Existing	
No.	Improvement	Description/Street	Description/Limits	Constr.	Const.	Improv.	Users	Users	Users	Future Users
				Costs ¹	Costs ²	Cost ³	(%)	(%)	(\$)	(\$)
Llagas Drainage Basin										
LLA-P1	Pipeline	Middle Ave	From Olive Ave to Gallant Fox Wy	\$ 204,622	\$ 266,008	\$ 345,811	0%	100%	\$ -	\$ 345,811
LLA-P2	Pipeline	Gallant Fox Wy	From Middle Ave to 1,200' e/o Middle Ave	<u>397,207</u>	<u>516,369</u>	<u>671,280</u>	<u>20%</u>	80%	<u>134,256</u>	<u>537,024</u>
Subtotal				\$ 601,829	\$ 782,377	\$ 1,017,091			\$ 134,256	\$ 882,835
Butterfield Drainage Basin										
BTR-D1	Basin		Approx. 900' nw/o Pollard Ave and Seymour Ave	\$ 1,171,894	1,523,462	1,980,500	50%	50%	\$ 990,250	\$ 990,250
Fisher Drainage Basin										
FIS-D1	Basin		Approx 1,000' sw/o Sutter Blvd and Butterfield Blvd	\$ 609,641	792,534	1,030,294	50%	50%	\$ 515,147	\$ 515,147
Other Storm Drainage Improvements										
Hale	Misc	Hale Ave	From Hillwood Lane to Spring Avenue and Dewitt Avenue	\$ 5,000,000	5,000,000	5,000,000	0%	100%	\$ -	\$ 5,000,000
Total									\$ 6,443,879	\$ 12,042,945
Less Existing Fund Balance ³										<u>3,962,023</u>
Net Cost of Planned Facilities										\$ 8,080,922

¹ Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

² Estimated construction cost plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

³ Existing fund balance of \$10,405,902 as of June 30, 2018. \$3,962,023 remaining after funding existing user costs.

Source: Morgan Hill Storm Drainage Master Plan, 2018, Table ES.3; Engineering News Record; Willdan Financial Services.

Allocation of Facilities to New Development

Table 8.4 allocates new development's share of storm drain facilities to new development. New development's share of the costs is equal to the total cost of the projects net of the existing fund balances. The facility standard, in this case a planned facilities standard, is calculated by dividing new development's share of planned facilities by the growth in EDUs.

Table 8.4: Cost per Equivalent Dwelling Unit

Cost Allocated to New Development	\$ 8,080,922
Growth in EDUs	<u>5,297</u>
Cost per EDU	\$ 1,526

Sources: Tables 8.2 and 8.3; Willdan Financial Services.

Non-Fee Funding Required

No non-fee funding will be required to fund the facilities, as existing storm drain fund balances are sufficient to fully fund existing development's share of those facilities. Impact fee revenue will fully fund new development's share of the facilities.

Fee Schedule

The impact fee for storm drain facilities is shown in **Table 8.5**. The cost per EDU is converted to a fee per unit of new development based on the EDU factors shown in Table 8.1. The total fee includes a two percent (2%) administrative charge to fund costs that include: (1) a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, (2) fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 8.5: Storm Drain Facilities Fee

	A	B	C = A x B D = C x 0.02		E = C + D		F	G = E x F
	Cost Per EDU	EDU	Base Fee ¹	Admin Fee ^{1,2}	Total Fee ¹	Fee per Sq. Ft.	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 1,526	1.00	\$ 1,526	\$ 31	\$ 1,557			
Multi-Family (Greater than 1,200 SF)	1,526	0.71	1,083	22	1,105			
Multi-Family (Less than 1,200 SF)	1,526	0.33	504	10	514			
<u>Nonresidential</u>								
Commercial	\$ 1,526	0.62	\$ 946	\$ 19	\$ 965	\$ 0.97	21.78	\$ 21,018
Office	1,526	0.62	946	19	965	0.97	21.78	21,018
Industrial	1,526	0.38	580	12	592	0.59	26.14	15,475
Auto Dealership	1,526	0.62	946	19	965	0.97	21.78	21,018
Hotel	1,526	0.20	305	6	311	NA	n/a	n/a

Note: KSF = 1,000 Square Feet

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analysis.

³ Based on assumed floor-area-ratio (FAR) from the General Plan. FAR for commercial, office and auto dealerships assumed to be 0.5 based on the "General Commercial" land use. FAR for Industrial assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 8.1 and 8.4; Willdan Financial Services.

9. Public Safety Facilities

This chapter documents the impact fee for public safety facilities. The public safety facilities in this fee category include a variety of facilities including police and fire facilities.

Service Population

Public safety facilities are used to provide services to both residents and businesses. The service population used to determine the demand for public safety facilities includes both residents and workers.

Table 9.1 shows the existing and future projected service population for public safety facilities. While specific data is not available to estimate the actual ratio of demand per resident to demand by businesses (per worker) for these services, it is reasonable to assume that demand for these services is less for one employee compared to one resident, because nonresidential buildings are typically occupied less intensively than dwelling units. The 0.31-weighting factor for workers is based on a 40-hour workweek divided by the total number of non-work hours in a week (128) and reflects the degree to which nonresidential development yields a lesser demand for public safety facilities.

Table 9.1: Public Safety Facilities Service Population

	A Persons	B Weighting Factor	A × B = C Service Population
<u>Residents</u>			
Existing (2019)	45,360	1.00	45,360
New Development (2019-2035)	12,454	1.00	12,454
Total (2035)	57,814		57,814
<u>Workers</u>			
Existing (2019)	16,446	0.31	5,100
New Development (2019-2035)	5,074	0.31	1,600
Total (2035)	21,520		6,700
<u>Combined Residents and Weighted Workers</u>			
Existing (2019)			50,460
New Development (2019-2035)			14,054
Total (2035)			64,514

¹ Workers are weighted at 0.31 of residents based on a 40 hour work week out of a possible 128 non-work hours in a week (40/128 = 0.31)

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's public safety facility inventory, the cost of planned facilities and facility standards.

Existing Inventory

Table 9.2 shows the existing inventory of public safety facilities, along with the facilities' estimated replacement value. The estimated land value was developed based on data from four recent appraisals of City owned property and is used consistently throughout this report to value City-owned land. Building values are based on the estimated replacement cost of each facility. Building values were informed by the City's recent construction cost experience. The present value of debt service payment made to date on the police headquarters building is also listed as an owned asset. Likewise, the present value of remaining payments is subsequently listed as a planned facility in the next table. Table 9.2 also lists the replacement cost of the City's owned fleet of public safety facilities vehicles, including police vehicles and fire apparatus.

Table 9.2: Existing Public Safety Facilities Inventory

	Inventory	Unit	Unit Cost	Replacement Cost
<u>Land (acres)</u>				
Dunne Hill Fire Station	0.29	acres	\$ 790,000	\$ 229,000
El Toro Fire Station ¹	0.50	acres	790,000	395,000
Third Fire Station Land	1.78	acres	790,000	1,406,000
Police Station	3.71	acres	790,000	2,931,000
Subtotal - Land	6.28			\$ 4,961,000
<u>Buildings (square feet)</u>				
Dunne Hill Fire Station	3,316	sq. ft.	\$ 1,000	3,316,000
El Toro Fire Station	5,180	sq. ft.	1,000	5,180,000
Police Headquarters Building ⁴			NA	11,121,324
Subtotal - Buildings	8,496			\$ 19,617,324
<u>Vehicles³</u>				\$ 7,233,000
Total Value - Existing Facilities				\$ 31,811,324

¹ Total site is 1.89 acres. Only 0.5 acres is utilized for fire department activities.

² City Hall and Development Services Center building unit costs are based on the actual construction cost of the Development Services Center.

³ The City owns 44 public safety vehicles and apparatus.

⁴ Total value of building, less new development's share of remaining debt service.

Sources: City of Morgan Hill; Willdan Financial Services.

Planned Facilities

Table 9.3 shows the additional public safety facilities the City plans to develop through the 2035 planning horizon. The City plans to expand an existing fire station, and to build a new fire station,

in addition to buying new fire apparatus'. These facilities are required as a direct result of new fire service demands brought on by new development. Additionally, a third fire station has been recommended per the City's Public Safety Master Plan. During the dissolution of the Redevelopment Agency, the settlement agreement provided for the City to retain property on Butterfield Boulevard for this third fire station. However, the agreement requires the property be constructed by 2024. In addition to the cost of the construction of the building, there would be approximately \$1.5 million in new equipment costs associated with outfitting the station. The project budget accounts for a facility approximately 5,000 feet in size. Design and construction would be timed for the building to be completed by the deadline established in the settlement agreement.

Note that project costs for the new fire facilities are greater than the costs from the City's CIP because construction costs have risen dramatically since the CIP was published. The costs in Table 9.3 represent the City's most recent construction cost estimates for these facilities.

The City also plans to expand the police department and its inventory of police equipment that is required as a direct result of new police service demands brought on by new development. Also included in the list of planned facilities is the half of present value of outstanding debt payments for the Police Headquarters. The City assumes that half of the outstanding debt service would be funded through the General Fund, and half would be funded by impact fees.

Table 9.3: Planned Public Safety Facilities

	Value
Total Debt Outstanding - Police Headquarters ¹	\$ 2,757,720
Police Department Expansion and Equipment ²	2,270,000
Existing Fire Station Expansion	2,000,000
New Fire Station ³	5,000,000
Quint 105' Aerial (Equipped) ⁴	1,032,600
Type 3 Engine (Equipped) ⁴	396,700
Pickup - F250 ³	65,200
Personal Protective Equipment (9 FTEs) ⁴	97,800
Total Cost of Planned Facilities	\$13,620,020
Less Existing Fund Balances ⁵	\$ 3,170,019
Net Project Cost	\$10,450,001

¹ Discounted to 2019\$. Discount rate assumed to be 3.5% per year. The amount represents the remaining outstanding debt payments for the Police Facility Bonds which were originally issued in 2004, and subsequently refunded in 2015. The bonds were issued to partially fund the acquisition and construction of the New Police Facility, which cost approximately \$10 million at the time. When the debt was issued, the City assumed that the General Fund would pay for half of the annual debt service and the other half would be funded through impact fees. As such, only 50% of the outstanding debt is shown here.

² Includes equipment costs for 11 additional police officers.

³ New fire station consisting of 5,000 square foot building.

⁴ Adjusted from 2012 to current using the Consumer Price Index - All Urban Consumers - (CPI-U) 1913-2018.

⁵ Existing fund balances as of 6/30/2018.

Sources: City of Morgan Hill; Willdan Financial Services.

Cost Allocation

Table 9.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 9.4: Public Safety Facilities Existing Standard

Value of Existing Facilities	\$	31,811,324
Existing Service Population		50,460
Cost per Capita	\$	630
Facility Standard per Resident	\$	630
Facility Standard per Worker ²		195

¹ Based on a weighing factor of 0.31.

Sources: Tables 9.1 and 9.2.

Revenue Projection

The City plans to use public safety facilities fee revenue to construct improvements to add to the system of public safety facilities to serve new development. **Table 9.5** details a projection of fee revenue, based on the service population growth increment identified in Table 9.1. To fully fund the planned facilities, the City will have to identify \$1.6 million of alternative funding through the planning horizon. However, because the existing standard was used to calculate the fees, the City will meet the requirements of the Mitigation Fee Act so long as the projected \$8.9 million of fee revenue is used to fund new or expanded facilities to serve new development.

The City can use any other funding source other than impact fees to fund the balance of the planned facilities. Potential sources of revenue include, but are not limited to, existing or new general fund revenues, existing or new taxes, special assessments, grants and donations.

Table 9.5: Revenue Projection - Existing Standard

Cost per Capita	\$	630
Growth in Service Population (2019- 2035)		<u>14,054</u>
Fee Revenue	\$	8,854,020
Net Cost of Planned Facilities		<u>10,450,001</u>
Non-Fee Revenue to Be Identified	\$	(1,595,981)

Sources: Tables 9.1, 9.3 and 9.4.

Use of Fee Revenue

The City can use public safety facilities fee revenues for the construction or purchase of buildings, equipment and land that are part of the system of public safety facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 9.3.

Fee Schedule

Table 9.6 shows the maximum justified public safety facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit and employment densities (persons per dwelling unit or employees per 1,000 square feet of nonresidential building space). The total fee includes a two percent (2%) percent administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 9.6: Public Safety Facilities Fee - Existing Standard

Land Use	A	B	C = A x B		D = C x 0.02	E = C + D	F	G = E x F
	Cost Per Capita	Density	Base Fee ¹	Admin Charge ^{1, 2}		Total Fee ¹	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 630	3.02	\$ 1,903	\$ 38		\$ 1,941		
Multi-Family (Greater than 1,200 SF)	630	2.67	1,682	34		1,716		
Multi-Family (Less than 1,200 SF)	630	2.00	1,260	25		1,285		
<u>Nonresidential</u>								
Commercial	\$ 195	2.50	\$ 488	\$ 10		\$ 498	21.78	\$10,846
Office	195	3.00	585	12		597	21.78	13,003
Industrial	195	2.50	488	10		498	26.14	13,018
Auto Dealership	195	1.00	195	4		199	26.14	5,202
Hotel	195	0.30	59	1		60	21.78	1,307

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio from the General Plan. FAR for commercial and office assumed to be 0.5 based on the "General Office" land use. FAR for Industrial and auto dealership assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 2.2 and 9.4.

10. Implementation

Impact Fee Program Adoption Process

Impact fee program adoption procedures are found in the *California Government Code* section 66016. Adoption of an impact fee program requires the City Council to follow certain procedures including holding a public hearing. Data, such as an impact fee report, must be made available at least 10 days prior to the public hearing. The City's legal counsel should be consulted for any other procedural requirements as well as advice regarding adoption of an enabling ordinance and/or a resolution. After adoption there is a mandatory 60-day waiting period before the fees go into effect.

Inflation Adjustment

The City has kept its impact fee program up to date by periodically adjusting the fees for inflation. Such adjustments should be completed regularly to ensure that new development will fully fund its share of needed facilities. We recommend that the following indices be used for adjusting fees for inflation:

- ♦ Buildings – Engineering News-Record's Construction Cost Index (CCI)
- ♦ Equipment – Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)

The indices recommended can be found for local jurisdictions (state, region), and for the nation. With the exception of land, we recommend that the national indices be used to adjust for inflation, as the national indices are not subject to frequent dramatic fluctuations that the localized indices are subject to.

Due to the highly variable nature of land costs, there is no particular index that captures fluctuations in land values. We recommend that the City adjust land values based on recent land purchases, sales or appraisals at the time of the update.

While fee updates using inflation indices are appropriate for periodic updates to ensure that fee revenues keep up with increases in the costs of public facilities, the City will also need to conduct more extensive updates of the fee documentation and calculation (such as this study) when significant new data on growth forecasts and/or facility plans become available.

Reporting Requirements

The City complies with the annual and five-year reporting requirements of the *Mitigation Fee Act*. For facilities to be funded by a combination of public fees and other revenues, identification of the source and amount of these non-fee revenues is essential. Identification of the timing of receipt of other revenues to fund the facilities is also important.

Programming Revenues and Projects with the CIP

The City maintains a five-year Capital Improvement Program (CIP) to plan for future infrastructure needs. The CIP identifies costs and phasing for specific capital projects. The use of the CIP in this manner documents a reasonable relationship between new development and the use of those revenues.

The City may decide to alter the scope of the planned projects or to substitute new projects if those new projects continue to represent an expansion of the City's facilities. If the total cost of facilities varies from the total cost used as a basis for the fees, the City should consider revising the fees accordingly.

11. Mitigation Fee Act Findings

Public facilities fees are one-time fees typically paid when a building permit is issued and imposed on development projects by local agencies responsible for regulating land use (cities and counties). To guide the widespread imposition of public facilities fees the State Legislature adopted the *Mitigation Fee Act* (the *Act*) with Assembly Bill 1600 in 1987 and subsequent amendments. The *Act*, contained in *California Government Code* Sections 66000 through 66025, establishes requirements on local agencies for the imposition and administration of fee programs. The *Act* requires local agencies to document five findings when adopting a fee.

The five statutory findings required for adoption of the public facilities fees documented in this report are presented in this chapter and supported in detail by the preceding chapters. All statutory references are to the *Act*.

Purpose of Fee

- ♦ *Identify the purpose of the fee (§66001(a)(1) of the Act).*

Development impact fees are designed to ensure that new development will not burden the existing service population with the cost of facilities required to accommodate growth. The purpose of the fees proposed by this report is to provide a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide municipal services to new development.

Use of Fee Revenues

- ♦ *Identify the use to which the fees will be put. If the use is financing facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in §65403 or §66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the facilities for which the fees are charged (§66001(a)(2) of the Act).*

Fees proposed in this report, if enacted by the City, would be used to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City's sphere of influence. Fees addressed in this report have been identified by the City to be restricted to funding the following facility categories: general public facilities, traffic facilities, library facilities, parks, water facilities and storm drain facilities.

Benefit Relationship

- ♦ *Determine the reasonable relationship between the fees' use and the type of development project on which the fees are imposed (§66001(a)(3) of the Act).*

The City will restrict fee revenue to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development. Facilities funded by the fees are expected to provide a citywide network of facilities accessible to the additional residents and workers associated with new development. Under the *Act*, fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development residential and non-residential use classifications that will pay the fees.

Burden Relationship

- ♦ *Determine the reasonable relationship between the need for the public facilities and the types of development on which the fees are imposed (§66001(a)(4) of the Act).*

Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. For most facility categories service population standards are calculated based upon the number of residents associated with residential development and the number of workers associated with non-residential development. To calculate a single, per capita standard, one worker is weighted less than one resident based on an analysis of the relative use demand between residential and non-residential development.

The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.

Chapter 2, Growth Forecasts provides a description of how service population and growth forecasts are calculated. Facility standards are described in the *Facility Standards* sections of each facility category chapter.

Proportionality

- ♦ *Determine how there is a reasonable relationship between the fees amount and the cost of the facilities or portion of the facilities attributable to the development on which the fee is imposed (§66001(b) of the Act).*

The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to that project is based on the estimated new development growth the project will accommodate. Fees for a specific project are based on the project's size. Larger new development projects can result in a higher service population resulting in higher fee revenue than smaller projects in the same land use classification. Thus, the fees ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

See *Chapter 2, Growth Forecasts*, or the *Service Population*, or *Equivalent Dwelling Units* sections in each facility category chapter for a description of how service populations or other factors are determined for different types of land uses. See the *Fee Schedule* section of each facility category chapter for a presentation of the maximum justified facilities fees.

Appendix

Table A.1: Police: Lease Payments for Police Building

Date	Payment (nom. dollars)	Discount Factor ¹	Payment (real dollars)
<i>Past Payments</i>			
Jan-05	\$ 122,132	1.619	\$ 197,694
Jul-05	328,156	1.619	531,185
Jan-06	155,606	1.564	243,361
Jul-06	295,606	1.564	462,315
Jan-07	153,506	1.511	231,958
Jul-07	298,506	1.511	451,063
Jan-08	151,331	1.460	220,939
Jul-08	301,331	1.460	439,934
Jan-09	148,706	1.411	209,765
Jul-09	303,706	1.411	428,408
Jan-10	145,994	1.363	198,974
Jul-10	305,994	1.363	417,038
Jan-11	143,194	1.317	188,559
Jul-11	308,194	1.317	405,832
Jan-12	140,306	1.272	178,509
Jul-12	310,306	1.272	394,796
Jan-13	136,906	1.229	168,293
Jul-13	311,906	1.229	383,412
Jan-14	133,844	1.188	158,964
Jul-14	313,844	1.188	372,748
Jan-15	130,694	1.148	149,974
Jul-15	320,694	1.148	368,003
Jan-16	127,131	1.109	140,953
Jul-16	322,131	1.109	357,153
Jan-17	123,475	1.071	132,270
Jul-17	328,475	1.071	351,871
Jan-18	119,375	1.035	123,553
Jul-18	329,375	1.035	340,903
Jan-19	115,175	1.000	115,175
Subtotal	\$ 6,425,601		\$ 8,363,604

¹Discount rate assumed to be 3.5% per year.

Source: City of Morgan Hill.

Table A.1: Police: Lease Payments for Police Building - Continued

Date	Payment (nom. dollars)	Discount Factor ¹	Payment (real dollars)
<i>Future Payments</i>			
Jul-19	335,175	1.000	335,175
Jan-20	110,638	0.966	106,896
Jul-20	340,638	0.966	329,118
Jan-21	105,750	0.934	98,719
Jul-21	345,750	0.934	322,761
Jan-22	100,500	0.902	90,645
Jul-22	350,500	0.902	316,131
Jan-23	94,875	0.871	82,678
Jul-23	354,875	0.871	309,253
Jan-24	89,025	0.842	74,957
Jul-24	359,025	0.842	302,289
Jan-25	82,950	0.814	67,480
Jul-25	367,950	0.814	299,328
Jan-26	76,395	0.786	60,046
Jul-26	371,395	0.786	291,913
Jan-27	69,463	0.759	52,751
Jul-27	379,463	0.759	288,168
Jan-28	62,178	0.734	45,622
Jul-28	387,178	0.734	284,084
Jan-29	54,540	0.709	38,664
Jul-29	394,540	0.709	279,697
Jan-30	46,550	0.685	31,884
Jul-30	401,550	0.685	275,040
Jan-31	38,119	0.662	25,226
Jul-31	413,119	0.662	273,395
Jan-32	29,213	0.639	18,679
Jul-32	419,213	0.639	268,046
Jan-33	19,950	0.618	12,325
Jul-33	429,950	0.618	265,615
Jan-34	10,213	0.597	6,096
Jul-34	440,213	0.597	262,759
Subtotal	\$ 7,080,888		\$ 5,515,440

¹Discount rate assumed to be 3.5% per year.

Sources: City of Morgan Hill; Willdan Financial Services.

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
ADJUSTING THE SELECTED DEVELOPMENT IMPACT FEES**

WHEREAS, new development within the City of Morgan Hill ("City") will continue to result in additional population and business growth, and such growth will continue to place additional burdens on various City facilities, infrastructure and services, requiring construction of expanded and/or new City facilities and services; and

WHEREAS, all development within the City should bear a proportionate financial burden in the construction and improvement of public facilities and services necessary to service the growth engendered by such development; and

WHEREAS, the imposition of development impact fees is the preferred method of ensuring that new development bears its proportionate share of the cost of public facilities and service improvements; and

WHEREAS, imposition of impact fees to finance public facilities and service improvements required by new development is necessary in order to avoid adversely impacting existing facilities and services; and

WHEREAS, consistent with these principles, Chapter 3.56 of the City's Municipal Code establishes Development Impact Mitigation Fees; and

WHEREAS, Municipal Code Section 3.56.060 provides for revision of established fees, including increases, by resolution; and

WHEREAS, the City Council has received and duly considered the report authored by Willdan Financial Services ("Willdan") entitled "Development Impact Fee Update Study" dated July 9, 2019 (the "Willdan Report"), and presented to the City Council on September 4, 2019; and

WHEREAS, the Willdan Report analyzed the City's existing land use patterns and zoning, and the goals and objectives of the City's General Plan 2035, 2017 Public Safety Master Plan, 2017 Utilities Master Plans, 2017 Bikeways, Trails, Parks, and Recreation Master Plan, and 2018 Storm Drainage Master Plan; and

WHEREAS, the Willdan Report determined the public facilities and system improvements engendered by anticipated development in light of those various plans and existing and projected land use patterns and zoning; and

WHEREAS, the Willdan Report demonstrates, the development impact fees adjusted by this resolution are based upon estimated costs for new public facilities and service improvements that will be required, incrementally, by new development within the City's sphere of influence; and

WHEREAS, the Willdan Report demonstrates, the development impact fees adjusted by this resolution do not exceed the reasonable cost of providing public facilities and service improvements occasioned by development projects within the City; and

WHEREAS, the fees recommended by the Willdan Report rationally relate to the reasonable cost of providing public facilities occasioned by the development projects and service improvements within the City's sphere of influence; and

WHEREAS, the Willdan Report and all background data referenced in the report were available for public inspection and review at the City Clerk's office of the City of Morgan Hill; and

WHEREAS, City staff emailed information regarding the proposed adoption of and public hearing on the fees and a copy of the Willdan Report to all known regular real estate and development firms and individuals who have done business in the City in the recent past; and

WHEREAS, on March 21, 2019, Willdan and City staff hosted two special briefing sessions on the Willdan Report for those firms and individuals to provide them an opportunity to query the consultant and staff on how the development impact fees were calculated; and

WHEREAS, a public hearing on adoption of this resolution and the fees attached hereto as Exhibit A and incorporated herein by reference, was noticed pursuant to and in compliance with Government Code section 6062(a), and set as part of a regular City Council meeting held on September 4, 2019, in the Council Chamber located at City Hall, 17555 Peak Avenue; and

WHEREAS, the City Council has received and duly considered all written and oral comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and

WHEREAS, the City Council deems it necessary that the development impact fees be adjusted to ensure that new development in the City continues to pay its proportionate share of public facilities and service improvements necessary to accommodate such development in order to promote the public health, safety and welfare; and

WHEREAS, the City Council hereby incorporates the findings made in Municipal Code Section 3.56.010 and applies them in support of the adoption of this Resolution; and

WHEREAS, the Projects approved pursuant hereto are exempt from the California Environmental Quality Act (CEQA) under Section 15273 of Guidelines for CEQA and Public Resources Code Section 21080(b)(8) because they establish, modify and approve rates and charges for the purposes of obtaining funds for capital projects; and

WHEREAS, further reasons supporting the adjustment of the development impact fees described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Adopt a Resolution Updating the City's Select Development Impact Fees" submitted for City Council consideration at its meeting of September 4, 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.

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that:

Section 1. The recitals, findings and determinations set forth above are true and correct and are incorporated by reference herein.

Section 2. The City Council hereby further finds as follows, with respect to the requirements of California Government Code sections 66000 through 66025:

- A. *Purpose of Fee.* The purpose of the fees recommended in the Willdan Report is to provide a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide municipal services to new development.
- B. *Use of Fee Revenues.* The proposed fees would be used to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City's sphere of influence. Fees addressed in the Willdan Report are restricted to funding the following facility categories: traffic, library, water, storm drainage and public safety facilities.
- C. *Benefit Relationship.* Use of fee revenue will be restricted to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development. Facilities funded by the fees are expected to provide a City-wide network of facilities accessible to the additional residents and workers associated with new development. Fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development of residential and non-residential use classifications that will pay the fees.
- D. *Burden Relationship.* Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.
- E. *Proportionality.* The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to that project is based on the estimated new development growth the project will

accommodate. Fees for a specific project are based on the project's size. Larger new development projects can result in a higher service population resulting in higher fee revenue than smaller projects in the same land use classification. Thus, the fees ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

Section 3. The City Council hereby adjusts the selected development impact fees as stated in Exhibit A, which is attached hereto and incorporated by this reference. Except as modified herein, Resolution No 5592 and its attached fee schedule, along with the corresponding automatic annual adjustments pursuant to Municipal Code Section 3.56.050, shall remain in full force and effect.

Section 4. The City Council hereby orders that all adjustments in the selected development impact fees be effective 60 days following adoption of this ordinance.

Section 5. The City Council hereby finds the approval of the adjustments in the selected development impact fees of the City of Morgan Hill to be exempt from CEQA.

Section 6. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this resolution is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases, words, or portions thereof be declared invalid.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 4th day of September 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

Rich Constantine, MAYOR

∞ **CERTIFICATION** ∞

Attachment: Attachment 2: Resolution (2455 : Updating Development Impact Fees)

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on September 4, 2021.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Attachment 2: Resolution (2455 : Updating Development Impact Fees)

Exhibit A

UPDATED SELECT DEVELOPMENT IMPACT FEES

Land Use	Traffic Facilities	Library Facilities	Water	Storm Drainage	Public Safety Facilities
<i>Residential (DU)</i>					
Single Family	\$ 3,373	\$ 1,953	\$ 9,318	\$ 1,557	\$ 1,941
Multi-Family (>1,200SF)	2,091	1,727	4,286	1,105	1,716
Multi-Family (<1,200SF)	1,316	1,293	3,261	514	1,285
<i>Nonresidential (per KSF or per hotel room)</i>					
Commercial	12,514	-	2,236	965	498
Office	5,026	-	2,236	965	597
Industrial	3,272	-	1,584	592	498
Auto Dealership	8,837	-	2,236	965	199
Hotel	2,024	-	746	311	60

Maximum Justified Development Impact Fees per Study versus Existing Fees Comparison

Maximum Justified Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<u>Residential (DU)</u>										
Single Family	\$ 1,833	\$ 3,373	\$ 1,953	\$ 13,961	\$ 15,269	\$ 9,318	\$ 1,557	\$ 3,943	\$ 1,941	\$ 53,148
Multi-Family (>1,200SF)	1,621	2,091	1,727	12,342	12,923	4,286	1,105	3,460	1,716	41,271
Multi-Family (<1,200SF)	1,214	1,316	1,293	9,245	12,923	3,261	514	2,611	1,285	33,662
<u>Nonresidential (per KSF or per hotel room)</u>										
Commercial	469	12,514	-	-	3,241	2,236	965	-	498	19,923
Office	563	5,026	-	-	3,241	2,236	965	-	597	12,628
Industrial	469	3,272	-	-	2,240	1,584	592	-	498	8,655
Auto Dealership	188	8,837	-	-	3,241	2,236	965	-	199	15,666
Hotel	56	2,024	-	-	1,054	746	311	-	60	4,251

Existing Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<u>Residential (DU)</u>										
Single Family	\$ 551	\$ 2,006	\$ 2,126	\$ 5,790	\$ 15,269	\$ 3,902	\$ 4,142	\$ 3,943	\$ 953	\$ 38,682
Multi-Family (>1,200SF)	530	1,244	2,048	5,579	12,923	3,520	2,154	3,460	919	32,377
Multi-Family (<1,200SF)	365	1,244	1,402	3,820	12,923	3,520	2,154	2,611	633	28,672
<u>Nonresidential (per KSF or per hotel room)</u>										
Commercial	56	7,442	-	-	3,241	508	2,071	-	159	13,476
Office	66	2,989	-	-	3,241	508	2,071	-	192	9,067
Industrial	65	1,946	-	-	2,240	423	1,256	-	160	6,090
Auto Dealership	22	5,256	-	-	3,241	508	2,589	-	58	11,673
Hotel	14	1,204	-	-	1,054	166	1,372	-	26	3,835

Change in Development Impact Fee Amounts

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<u>Residential (DU)</u>										
Single Family	\$ 1,282	\$ 1,367	\$ (173)	\$ 8,171	\$ -	\$ 5,416	\$ (2,585)	\$ -	\$ 988	\$ 14,466
Multi-Family (>1,200SF)	1,091	847	(321)	6,763	-	766	(1,049)	-	797	8,894
Multi-Family (<1,200SF)	849	72	(109)	5,425	-	(259)	(1,640)	-	652	4,990
<u>Nonresidential (per KSF or per hotel room)</u>										
Commercial	413	5,072	-	-	-	1,728	(1,106)	-	339	6,447
Office	497	2,037	-	-	-	1,728	(1,106)	-	405	3,561
Industrial	404	1,326	-	-	-	1,161	(664)	-	338	2,565
Auto Dealership	166	3,581	-	-	-	1,728	(1,624)	-	141	3,993
Hotel	42	820	-	-	-	580	(1,061)	-	34	416

Proposed Development Impact Fees versus Existing Fees Comparison

Proposed Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<u>Residential (DU)</u>										
Single Family	\$ 551	\$ 3,373	\$ 1,953	\$ 5,790	\$ 15,269	\$ 9,318	\$ 1,557	\$ 3,943	\$ 1,941	\$ 43,695
Multi-Family (>1,200SF)	530	2,091	1,727	5,579	12,923	4,286	1,105	3,460	1,716	33,417
Multi-Family (<1,200SF)	365	1,316	1,293	3,820	12,923	3,261	514	2,611	1,285	27,388
<u>Nonresidential (per KSF or per hotel room)</u>										
Commercial	56	12,514	-	-	3,241	2,236	965	-	498	19,510
Office	66	5,026	-	-	3,241	2,236	965	-	597	12,131
Industrial	65	3,272	-	-	2,240	1,584	592	-	498	8,251
Auto Dealership	22	8,837	-	-	3,241	2,236	965	-	199	15,500
Hotel	14	2,024	-	-	1,054	746	311	-	60	4,209

Existing Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<u>Residential (DU)</u>										
Single Family	\$ 551	\$ 2,006	\$ 2,126	\$ 5,790	\$ 15,269	\$ 3,902	\$ 4,142	\$ 3,943	\$ 953	\$ 38,682
Multi-Family (>1,200SF)	530	1,244	2,048	5,579	12,923	3,520	2,154	3,460	919	32,377
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Commercial	56	7,442	-	-	3,241	508	2,071	-	159	13,476
Office	66	2,989	-	-	3,241	508	2,071	-	192	9,067
Industrial	65	1,946	-	-	2,240	423	1,256	-	160	6,090
Auto Dealership	22	5,256	-	-	3,241	508	2,589	-	58	11,673
Hotel	14	1,204	-	-	1,054	166	1,372	-	26	3,835

Change in Development Impact Fee Amounts

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<u>Residential (DU)</u>										
Single Family	\$ -	\$ 1,367	\$ (173)	\$ -	\$ -	\$ 5,416	\$ (2,585)	\$ -	\$ 988	\$ 5,013
Multi-Family (>1,200SF)	-	847	(321)	-	-	766	(1,049)	-	797	1,040
Multi-Family (<1,200SF)	-	72	(109)	-	-	(259)	(1,640)	-	652	(1,284)
<u>Nonresidential (per KSF or per hotel room)</u>										
Commercial	-	5,072	-	-	-	1,728	(1,106)	-	339	6,034
Office	-	2,037	-	-	-	1,728	(1,106)	-	405	3,064
Industrial	-	1,326	-	-	-	1,161	(664)	-	338	2,161
Auto Dealership	-	3,581	-	-	-	1,728	(1,624)	-	141	3,827
Hotel	-	820	-	-	-	580	(1,061)	-	34	374



FINANCE DEPARTMENT

17575 PEAK AVENUE
MORGAN HILL, CA 95037-4128
GENERAL: 408-779-7237
FAX: 408-778-1564
WWW.MORGAN-HILL.CA.GOV

MEMORANDUM

Date: September 4, 2019

To: Mayor Constantine and Council Members

From: Dat Nguyen, Finance Director

Reviewed by: Christina Turner, City Manager

Subject: Response to Kristina Lawson letter

This memorandum is in response to the letter from Kristina D. Lawson of the law office Hanson Bridgett LLP dated April 2, 2019, concerning the proposed increases in select development impact fees. The letter raises two concerns with one involving the technical aspects of the Mitigation Fee Act, and the other about the potential impact to affordable housing development from the proposed impact fees increases. The issue involving the technical aspects of the Act has been addressed separately by the City's impact fee study consultant, and is attached hereto as Exhibit A. The below analysis demonstrates that the proposed increases in select development impact fees will not impact affordable housing development in Morgan Hill.

The proposed increases in select development impact fees are significant in both dollar and percentage terms. However, when factoring in the elimination of Residential Development Control System (RDSCS) contributions for affordable housing projects, the affordable housing projects would see a significant decrease in the combined contribution amount. Under the old Measure C, all housing projects, regardless of affordability, would need to compete in the RDSCS process. In this RDSCS process, development allotments are competitively awarded based upon projects' public benefit contribution.

Under the Housing Accountability Act, as applied under the new Measure S, affordable housing projects are no longer required to compete in the RDSCS process. Using the most recent affordable housing projects, Crossing at Monterey by UHC, a 39-unit project, and Belle Salici – Monterey Road by EAH, a 19-unit project as examples, the developers from these projects had to commit \$493,350 for the Crossing at Monterey (\$12,650 per unit) and \$282,150 for the Belle Salici – Monterey Road (\$14,850 per unit) in RDSCS contributions to sufficiently score and be awarded with requested allotments. These RDSCS fiscal contributions from the above two affordable housing projects do not include the committed purchase of Transferable Development Credits (TDC) which amounted to \$143,832 for Crossing at Monterey project, and \$70,072 for Belle Salici – Monterey Road project. TDC's were created by the City Council many years ago to help implement the City's hillside and open space preservation activities.

Assuming the committed purchase of TDC's remains, when removing the RDSCS contributions,

these two recent affordable housing projects would experience savings in combined fees of \$543,387 for the 39-unit Crossing at Monterey project, and \$343,209 for the 19-unit Belle Salici – Monterey Road project. Just comparing existing and proposed impact fees, both of these affordable housing projects would pay a lower total impact fee based on the proposed impact fees schedule.

The Development Impact Fee Update Study would eliminate the land use type of Senior, Downtown, and Accessory Dwelling Unit (ADU) and reclassify the Multi-family into Multi-family units with more than 1,200 square feet of living space and the Multi-family units less than 1,200 square feet. That would make the 19-unit Belle Salici – Monterey Road project, which was assessed at the Multi-family category in the existing fee schedule, into a lower fee category of Multi-family less than 1,200 square feet. In addition, the 39-unit Crossing at Monterey project that was assessed at the Senior/Downtown/ADU category in the existing fee schedule would see the assessment decreased in the staff recommended impact fees schedule.

The table below shows the total existing combined fees of the two recent affordable housing projects compared to total proposed fees.

Existing Fee Scenario	Crossing at Monterey	Belle Salici - Monterey Road
Measure C - RDCS contributions	\$ 493,350	\$ 282,150
Impact Fees at 2019 Amount	614,172	605,789
Total	\$ 1,107,522	\$ 887,939
Proposed Fee Scenario		
Measure S - RDCS contributions	\$ -	\$ -
Proposed Impact Fees	564,135	544,910
Total	\$ 564,135	\$ 544,910
Impact Fees Savings	\$ 50,037	\$ 60,879
Combined Fees Savings	\$ 543,387	\$ 343,029

As we continue to ensure sustainable growth, Morgan Hill will continue its proud tradition of supporting affordable housing development. The aforementioned analysis of the two most recent affordable housing projects illustrates the proposed increases in select development impact fees would not impede affordable housing development in Morgan Hill. Morgan Hill has a rich legacy of supporting affordable housing development as the City is building more affordable housing per capita than other communities and has the largest per capita affordable housing ownership program in the State.



March 27, 2019

Mayor Constantine and City Councilmembers
City of Morgan Hill
VIA EMAIL

RE: Council Meeting April 3, 2019: Development Impact Fees

Dear Mayor Constantine and Councilmembers,

BIA Bay Area (BIA), representing hundreds of home builders throughout the Bay Area, respectfully submits the following comments regarding City of Morgan Hill (City) development impact fee increases that are before you for action on the April 3, 2019 agenda. BIA appreciates that the City Council has directed Staff to recommend residential impact fees for traffic and parks lower than the maximum legally justifiable levels because the City will not be able to build and maintain the corresponding facilities. Nevertheless, we oppose the recommended residential development impact fee increases as unjustifiably high and they are a factor in driving higher housing costs in Morgan Hill and Santa Clara County.

BIA remains very concerned by the spiraling cost of development and construction, including impact fees assessed by government. Affordable housing requirements, park fees, traffic fees, facility fees, sewer and water fees, school fees, etc., etc., all add tens of thousands of dollars to the cost to build a new home, pricing thousands of California families out of the market each day. Rising impact fees must be administered more judiciously.

The Turner Center for Housing Innovation at UC Berkeley has concluded in its March 2018 report, "It All Adds Up: The Cost of Housing Development Fees in Seven California Cities", individual fees add up and substantially increase the cost of building housing. Findings from this report show that development impact fees have significant implications for the cost and delivery of new housing in California. For example, Turner Center research found that total fees can amount to anywhere from 6 percent to 18 percent of the median price of a new home depending on location.

BIA also strongly recommends that the City assess whether any new or increased fee would individually or cumulatively represent a constraint to new housing and whether that action could trigger HCD action on the City's adopted housing element under AB 72. Here is a brief explanation of AB 72 from the HCD website:

"AB 72 grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

In addition, HCD may notify the California Office of the Attorney General that the local jurisdiction is in violation of state law for non-compliance with housing element law, the Housing Accountability Act, "no net loss" law, density bonus law or anti-discrimination law."

Other BIA concerns regarding the development impact fee increases include:

- Fee assessment and payment requirements – The City should confirm that fees are set for all residential projects at time of application with payment due at building permit for single family homes or due at certificate of occupancy for multifamily projects;
- Total fee load – The total fee load before and after adoption of the development impact fee, including BMR inclusionary or linkage fees, should be clearly communicated. The staff report and supporting document omit important parts of this information;
- Feasibility Study – A feasibility study should analyze all development product types before recommending fee levels;

While BIA acknowledges the City Council's direction to reduce the 2019 development impact fee increase for traffic and parks below the maximum justifiable levels, we feel it is vital to point out that impact fees create serious impediments to addressing the housing affordability crisis the region is facing. BIA Bay Area looks forward to working with the City of Morgan Hill on development issues.

Thank you for your attention to these concerns.

Yours truly,

Dennis Martin
BIA Bay Area



Development Impact Fee Update



Attachment: Presentation (2455 : Updating Development Impact Fees)

Background

1. GP 2035 adopted 2016

2. Master Plans

- Public Safety adopted 2017
- Utilities adopted 2017
- Bikeways, Trails, Parks, and Recreation adopted 2017
- Storm Drainage adopted 2018

Last Update

1. Traffic and Recreation in 2015

- Recreation not being updated at this time

2. Fire in 2013

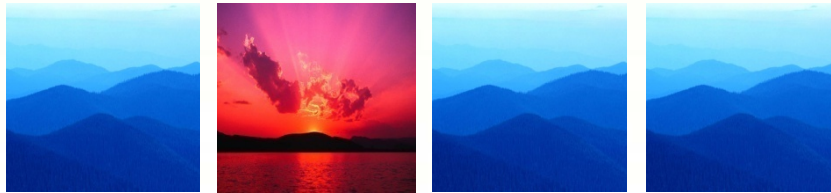
3. General Facilities, Park, Police, Library, and Storm Drainage in 2010

4. Utilities 2007

- Wastewater not being updated at this time

What are impact fees?

- One-time fees charged to new development, usually at building permit
 - Not an ongoing fee charged to residents or business owners
- May be used to fund facilities needed to serve new development
 - Not for operations and maintenance costs
 - Not for the share of facilities serving existing development



Conducting an Impact Fee Nexus Study

Mitigation Fee Act Findings (Govt. Code §66001)

- Key findings
 - Need: Development $\approx$ Need for facilities
 - Benefit: Development $\approx$ Use of revenue
 - Rough proportionality: Fee amount $\approx$ development's share of facility costs
- Other findings
 - Purpose of fee
 - Use of fee revenue

Impact Fees – Basic Methodology

1. Estimate existing development and future growth
2. Identify facility standards
3. Determine new facility needs and costs
4. Allocate share to accommodate growth
5. Identify alternative funding needs
6. Calculate fee by allocating costs per unit of new development

City of Morgan Hill Growth Projections

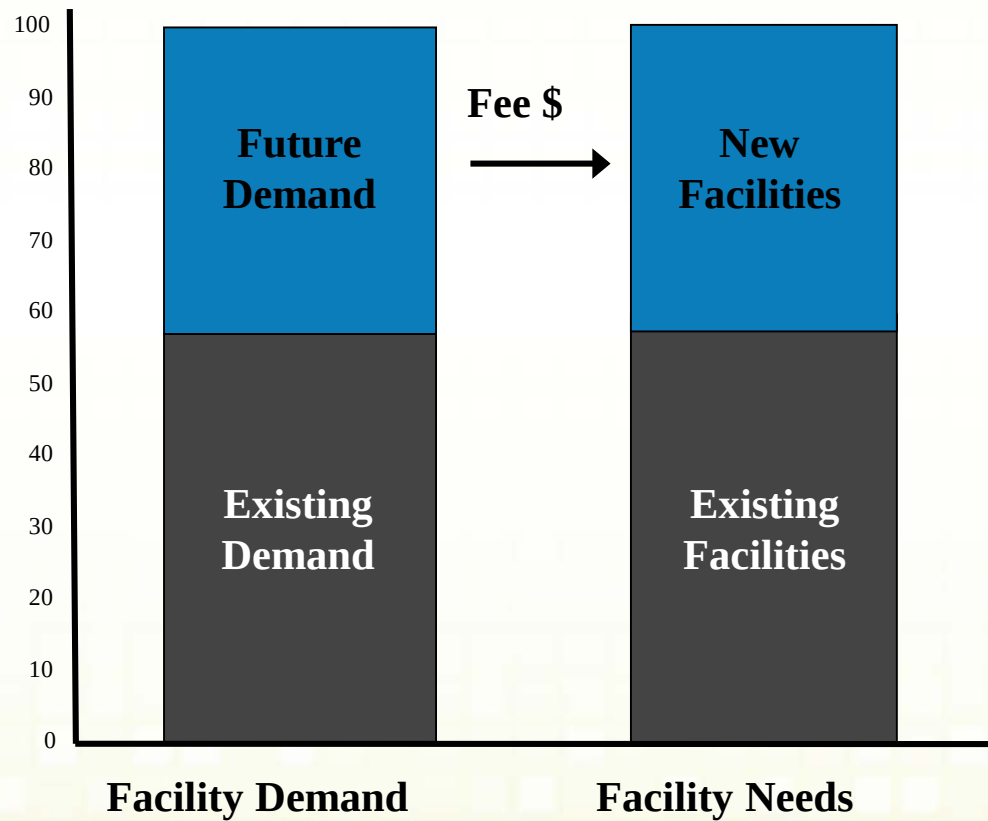
City of Morgan Hill Growth Projections

	2019	2035	Increase
Residents	45,360	57,814	12,454
Dwelling Units	15,105	19,252	4,147
Employment	16,446	21,520	5,074
Hotel Rooms	919	1,134	215

Sources: California Department of Finance (DOF) Table E-5, 2019; U.S. Census Bureau, LEHD Origin-Destination Employment Statistics (2002-2015) accessed at <https://onthemap.ces.census.gov>; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

Allocating Cost of New Facilities: *Existing Inventory*

14.g



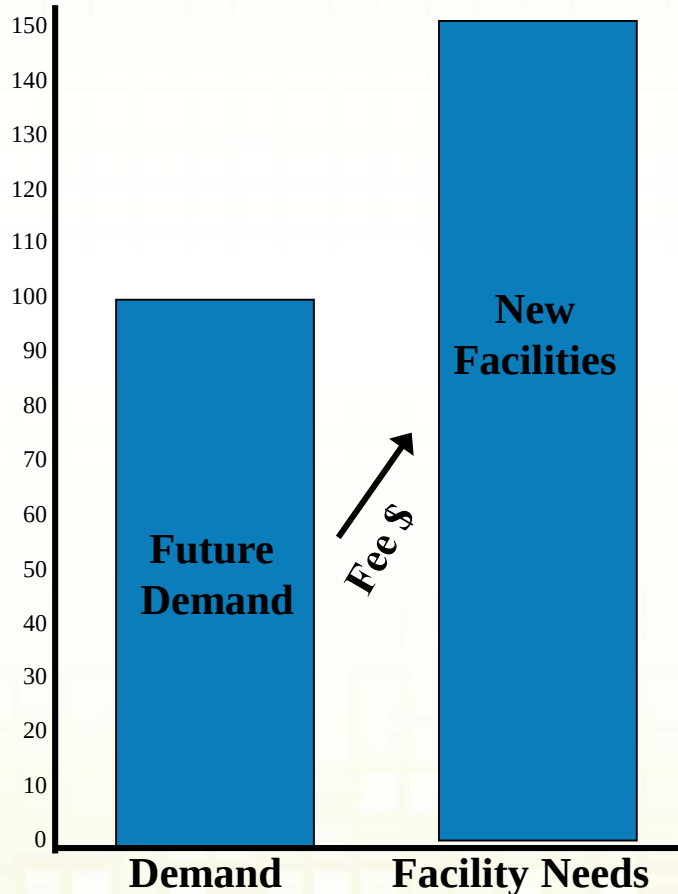
Attachment: Presentation (2455 : Updating Development Impact Fees)

Allocating Cost of New Facilities:

Planned Facilities Method

14.g

Planned Facilities Method



- Use engineering models to demonstrate need for facilities to serve growth
- Usually applicable for traffic & utility fees
- May also have deficiencies that must be funded by alternative revenues

City of Morgan Hill Impact Fee Categories

Existing Standard:

- General Public Facilities
- Library Facilities
- Public Safety Facilities

Not Being Updated:

- Sewer Facilities
- Community Recreation Centers

Planned Facilities Standard:

- Traffic Facilities
- Water
- Storm Drainage
- Parks

Impact Fee Revenue Projection

Impact Fee Revenue Projection

Fee Category	Total Project Cost	Development Fee Revenue	Additional Funding Required
General Public Facilities	\$ 18,000,000	\$ 8,362,130	\$ 9,637,870
Traffic Facilities	56,323,974	34,354,764	21,969,210
Library Facilities	5,580,000	7,895,800	-
Parks	56,429,000	56,429,000	-
Sewer	81,617,139	59,259,594	22,357,545
Water	46,689,058	33,396,751	13,292,307
Storm Drainage ¹	12,042,945	8,080,922	-
Public Safety Facilities	10,450,001	8,854,020	1,595,981
	<u>\$ 287,132,117</u>	<u>\$ 216,632,981</u>	<u>\$ 68,852,912</u>

¹ Existing fund balances fund the difference between total project cost and projected impact fee revenue.

February 20, 2019 – Council Direction

1. Reduce total Priority Bikeways projects – lower traffic impact fee
2. Reduce new parks to be built – lower park impact fee
3. No phase in increases – effective July 1, 2019

March 21, 2019 – Public Meeting Discussion

- Phase in increases
- ADU density

Changes to the Latest Update Study

- Adjusted costs for inflation to June 2019
- Added Public Safety Facilities
- Adjusted overall dwelling units
- Changed residential category of Multi-Family to Greater or Lesser Than 1,200 SF
- Added more text throughout to better describe project costs

New Recommendation

- Remove Park and General Public Facilities Impact Fees

Maximum Justified Impact Fee Schedule

Maximum Justified Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Sewer	Water	Storm Drainage	CRC	Public Safety Facilities	Total
<i>Residential (DU)</i>										
Single Family	\$ 1,833	\$ 3,373	\$ 1,953	\$ 13,961	\$ 15,269	\$ 9,318	\$ 1,557	\$ 3,943	\$ 1,941	\$ 53,148
Multi-Family (>1,200SF)	1,621	2,091	1,727	12,342	12,923	4,286	1,105	3,460	1,716	41,271
Multi-Family (<1,200SF)	1,214	1,316	1,293	9,245	12,923	3,261	514	2,611	1,285	33,662
<i>Nonresidential (per KSF or per hotel room)</i>										
Commercial	469	12,514	-	-	3,241	2,236	965	-	498	19,923
Office	563	5,026	-	-	3,241	2,236	965	-	597	12,628
Industrial	469	3,272	-	-	2,240	1,584	592	-	498	8,655
Auto Dealership	188	8,837	-	-	3,241	2,236	965	-	199	15,666
Hotel	56	2,024	-	-	1,054	746	311	-	60	4,251

Total Proposed Fee Comparison

Land Use	Current Fee	Per Update Study			Proposed		
		Maximum Justified Fee	Amount Change from Current Fee	% Change from Current Fee	Proposed Fee	Amount Change from Current Fee	% Change from Current Fee
<i>Residential (per dwelling unit)</i>							
Single Family	\$ 38,682	\$ 53,148	\$ 14,466	37%	\$ 43,695	\$ 5,013	13%
Multi-Family (>1,200SF)	32,377	41,271	8,894	27%	33,417	1,040	3%
Multi-Family (<1,200SF)	28,672	33,662	4,990	17%	27,388	(1,284)	-4%
<i>Nonresidential (per KSF or per hotel room)</i>							
Commercial	\$ 13,476	\$ 19,923	\$ 6,446	48%	\$ 19,510	\$ 6,033	45%
Office	9,067	12,628	3,561	39%	12,131	3,064	34%
Industrial	6,090	8,655	2,564	42%	8,251	2,160	35%
Auto Dealership	11,673	15,666	3,993	34%	15,500	3,827	33%
Hotel	3,835	4,251	415	11%	4,209	373	10%

Impact Fee Comparison

Single Family Dwelling Unit - Impact Fee Comparison

Fee Category	Morgan Hill			Gilroy	San Jose	
	Existing	Study	Proposed		Low	High
General Public Facilities	\$ 552	\$ 1,833	\$ 551	\$ 20,498	\$ -	\$ -
Sewer	15,269	15,269	15,269	12,501	1,227	1,227
Storm Drainage	4,142	1,557	1,557	71	270	270
Street Tree	-	-	-	174	-	-
Traffic	2,006	3,373	3,373	11,561	-	-
Water	3,902	9,318	9,318	4,294	-	-
Police	817	-	-	-	-	-
Fire Protection	127	-	-	-	-	-
Public Safety Facilities		1,941	1,941			
Library	2,126	1,953	1,953	-	-	-
Parks	5,790	13,961	5,790	-	11,200	58,800
CRC	3,943	3,943	3,943	-	-	-
Total	\$ 38,674	\$ 53,148	\$ 43,695	\$ 49,099	\$ 12,697	\$ 60,297

Tonight's Recommendation

1. Adopt Final Update Study prepared by Willdan
2. Open Public Hearing and Receive Public Comments
3. Close Public Hearing
4. Adopt Resolution Approving of Updated Development Impact Fees

Questions and Answers



August 26, 2019

Morgan Hill City Council

Re: Development Impact Fee Update Study: Final Draft
City Council Meeting September 4, 2019

Dear Mayor Constantine and Councilmembers,

We are objecting to the Development Fee Impact per
“Final Draft” July 9, 2019 conclusions and analyses.

As a background, we have been homebuilders and
developers in our community for over 35 years; and, as
licensed contractors we are very familiar with construction
costs. We have taken the time to breakdown the “Planned
Library Facilities Expansion” of 5000 square feet.

As you may remember the Sunsweet site was
consider as a downtown location for our Library; prior to its
final location near City Hall. We hired both a San
Francisco architect and a San Jose General Contractor,
who each had designed and/or constructed libraries within
our greater South Bay Area, in our presentation to the
City.

This past week we reached out to A licensed contractors to confirm present day construction cost for a library addition of 5000 square feet to be \$1,500,000 (\$300/square foot). If you add needed subs: Architect, Structural Engineer, Soils engineer, overhead etc. we believe that realistically a 5000 square foot addition to the existing library total costs would be less than \$1,750,000; significantly less than the \$4,500,000 in the report.

We would ask that the City do a more careful analysis of cost projections in all phases of Willdan report and review the entire Development Impact Fee update and cost analysis.

Thank you.

A handwritten signature in black ink, appearing to read "Roche Garcia". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roche Garcia

Glenrock Builders, Inc.

KRISTINA D. LAWSON
 PARTNER
 DIRECT DIAL (925) 746-8474
 DIRECT FAX (925) 746-8490
 E-MAIL klawson@hansonbridgett.com



April 2, 2019

VIA ELECTRONIC MAIL

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Honorable Mayor Constantine and Members
 of the City Council
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037

Re: Request for Postponement; April 3, 2019 City Council Agenda Item No. 13: Resolution
 Updating the City's Select Development Impact Fees

Dear Honorable Mayor Constantine and City Councilmembers:

This office represents a broad coalition of public and private home builders as well as local land owners. On behalf of our client, we have reviewed the Staff Report prepared for Agenda Item No. 13 for the City Council's April 3, 2019 meeting, to (1) adopt of the Development Impact Fee Update Study prepared by Willdan Financial Services and dated January 31, 2019 ("Nexus Study") and (2) adopt a resolution "updating the City's select Development Impact Fees." We have also preliminarily reviewed the Nexus Study.

To be clear, and what the Staff Report fails to simply state, the proposed fee "update" to "select" Development Impact Fees proposed for adoption are in fact, substantial fee increases that include for single family dwellings, increases for public facilities from \$552 to \$3638, for water from \$3,902 to \$8,914, and for parks from \$5,790 to \$7,201 (the originally proposed increase based on the Nexus Study was to \$14,402). Traffic impact fees will increase from \$2,006 to \$3,107.

Also omitted from the Staff Report and Nexus Study is a direct comparison of the total proposed fee amounts and maximum justified fee amounts, against the current fees, thereby minimizing the effect of the proposed actions. Significantly, the Nexus Study purports to justify maximum increases of even more, reflecting an increase above current fees by 38% for single family dwelling units and 28% for multi-family dwelling units. The total maximum residential fee justified by the Nexus Study is \$53,405 for a single family dwelling unit, \$41,551 for a multi-family dwelling unit, and \$35,313 for a senior/downtown/accessory unit.

We write to respectfully request that you postpone this item until such time as this council, all affected stakeholders and members of the public have had a meaningful opportunity to closely

examine the legal adequacy of the justification for the fee increases provided by the Nexus Study and as necessary, require additional data and analysis. In light of the current housing crisis, it is vital that the City also evaluate the long-term effect the proposed fee increases will have on the feasibility of developing any new housing as envisioned under the General Plan, and on the ever-increasing costs of existing housing. When combined with the recent increase in Below Market Rate requirements, which now require 15% (up from 8%) of residential projects to be affordable units, and the increase in the In-Lieu Housing Fee from \$12.92 to \$19.70 per habitable square foot of residential building area of market-rate housing (also ignored in the Staff Report), the proposed development impact fee increases will have a devastating impact on the ability to develop any new housing whatsoever.

As summarized below, it is clear from even a preliminary review of the Nexus Study that it does not adequately establish and evidence an equitable relationship between the services and facilities to be funded by the proposed fees and the impacts resulting from future development, and therefore, does not satisfy the requirements of the Mitigation Fee Act, Government Code Section 61000 *et seq.*

The legal requirements for the enactment of development impact fees are set forth in the Mitigation Fee Act and were established by the Legislature specifically “in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.” (*Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 691.) To increase development impact fee amounts, the Mitigation Fee Act requires the City to satisfy all of the following requirements: (1) Identify the purpose of the fee; (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified; (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

First, the Nexus Study lacks basic information to support the requisite need for the proposed fees. More specifically, the Nexus Study does not adequately identify the new facilities and facility improvements to be funded from the fee increases, and demonstrate that such facilities and improvements will be required as a result of new development. For example, the parks fee analysis does not specifically identify the 40.40 acres of parkland to be acquired improved to justify the fee. In addition, the planned facilities listed in Table 3.3 of the Nexus Study are described as those planned through the 2035 planning horizon but the Nexus Study fails to establish that the additional facilities and improvements are required to accommodate future growth. It appears to assume, without any support, that existing facilities have no additional capacity to accommodate growth.

At a minimum, the Nexus Study must be supplemented and revised to identify the current and projected level of service for each public facility and how the additional facilities or improvements will be needed to accommodate future growth. This should be done by quantifying the projected burden that new development will place on the City's infrastructure, and allocating the costs of providing the needed public services between the existing and new populations

Second, it is not clear that the Nexus Study utilizes accurate growth projections to serve as the basis of the City's anticipated future public facilities and infrastructure needs. The Nexus Study appears to rely on imprecise data to derive population and land use assumptions. Without

Honorable Mayor Constantine and Members of the City Council
April 2, 2019
Page 3

additional supporting information, and evidence of consistency with the City's existing plans, the City's speculative determinations regarding future growth cannot support the required finding of the anticipated need created by new development. The drastic increases purportedly justified by the Nexus Study, warrant a closer examination of the assumptions relating to residential development densities, land uses, and populations.

As a practical matter, while the Nexus Study is generally based on the projected development to 2035 under the General Plan, the effect of the fee increase will essentially render those projections unachievable—particularly when combined with the recently increased BMR requirements—and exacerbate existing impediments to housing development, contrary to every statewide and regional policy and mandate on housing.

Finally, we note that due to the lack of outside sources to fund the operation and maintenance of the new parks, the park impact fee as initially proposed was reduced by half. The Nexus Study indicates that non-fee funding is also needed for Public Facilities and yet no corresponding reduction appears to be proposed for the proposed Public Facilities fee. Once adopted, the Nexus Study presumably will provide the basis for further increases up to the maximum amounts established therein and yet it is not clear when, how and on what basis the City may adopt further increases.

Accordingly, we urge the council to postpone its consideration of the proposed increase in development impact fees to allow additional time to ensure the legal adequacy of the Nexus Study.

We appreciate your time and consideration, and look forward to providing detailed comments once we have had an opportunity to fully evaluate the Nexus Study.

Very truly yours,



Kristina D. Lawson

KDL:rsc



Memorandum

TO: Dat Nguyen, City of Morgan Hill

FROM: James Edison and Carlos Villarreal, Willdan Financial Services

DATE: April 10, 2019

SUBJECT: Willdan Responses to April 2, 2019 Letter

The following are our responses to the Hanson Bridgett's April 2 letter Re: Request for Postponement; April 3, 2019 City Council Agenda Item No. 13: Resolution Updating the City's Select Development Impact Fees. The responses below address the technical concerns regarding Willdan's Development Impact Fee Update Study prepared by Willdan Financial Services and dated January 31, 2019 ("Nexus Study").

Note that some of the concerns raised regard the policy decisions that the City Council must make and have no bearing on the technical validity of the Nexus Study. For example, the percentage increase of the maximum justified impact fees compared to the existing fees or the total fee burden considering other fees that the City charges do not factor into the nexus analysis, and this memorandum does not comment on these concerns.

The letter raises three technical concerns with the Nexus Study, summarized below. This memorandum addresses each concern.

"First, the Nexus Study does not adequately identify the new facilities and facility improvements to be funded from the fee increases and demonstrate that such facilities and improvements will be required as a result of new development."

Willdan disagrees with this assertion. The Nexus Study identifies facilities to be funded by the impact fees in Tables 3.3, 4.3, 4.4, 5.3, 6.6, 7.3 and 8.3 of the report. Facilities included in these tables were identified by City master planning efforts and City staff expertise and are required to serve the City's projected 2035 General Plan service population.

Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. For most facility categories service population standards are calculated based upon the number of residents associated with residential development and the number of workers associated with non-residential development. To calculate a single, per capita standard, one worker is weighted less than one resident based on an analysis of the relative use demand between residential and non-residential development.

The standards used to identify the facilities to serve growth are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.

Facility standards for traffic facilities are allocated based on trip generation. Facility standards for parks are based on acres of park per 1,000 residents. Facility standards for water facilities are based on the flow generated by each unit of development. Facility standards for storm drainage facilities are based on the amount of impervious surface created by each unit of development. For other fee categories allocations are based on service population (residents and a fraction of employees).

The Mitigation Fee Act requires, in summary, that nexus study demonstrate “how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.” The methodologies described above, and detailed in the Nexus Study, are consistent with this, with standard practice in the industry, and with case law interpreting this requirement.

“Second, it is not clear that the Nexus Study utilizes accurate growth projections to serve as the basis of the City’s anticipated future public facilities and infrastructure needs. The Nexus Study appears to rely on imprecise data to derive population and land use assumptions. Without additional supporting information, and evidence of consistency with the City’s existing plans, the City’s speculative determinations regarding future growth cannot support the required finding of the anticipated need created by new development. The drastic increases purportedly justified by the Nexus Study, warrant a closer examination of the assumptions relating to residential development densities, land uses, and populations.”

Willdan disagrees with this assertion. The growth projections used in the Nexus Study are based on the City’s General Plan EIR and the constraints of the City’s voter-approved Residential Development Control System (RDCS). Willdan reviewed the growth projections extensively with the City’s planning department and the growth projections are in line with the existing City documents and policies.

Table 2.1 from the Nexus Study shows the estimated number of residents, dwelling units, employees, and building square feet in Morgan Hill, both in 2018 and in 2035. Existing residents and dwelling units are based on California Department of Finance (DOF) data. These estimates exclude “group quarters” resident populations, since they do not contribute to demand for facilities. Estimates of residents in 2035 also exclude group quarters residents and is based on Municipal Code Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200.

Base year dwelling unit estimates for single family units are based on DOF data. Senior/ downtown/accessory dwelling unit estimates are consistent with data from the City’s 2015 Traffic Impact Fee study. Multifamily base year units estimated as the difference between total units, single family units from DOF and senior/downtown/ADU units from 2015 Traffic Impact Fee study. Total dwelling units in 2035 are calculated by dividing 2035 residents by the current density of 3.145 residents per household and assuming a 4.687% vacancy rate, consistent with current DOF estimates.

Base year employees are estimated based on data provided by the US Census’ American Community Survey and exclude local government employees. Future employees are estimated based on data from the Association of Bay Area Governments (ABAG) used in the Morgan Hill General Plan. Estimates of base year and planning horizon building square feet come from the Morgan Hill 2035 Final EIR.

Furthermore, there is an inherent balance in the impact fee program in that if less development occurs than projected, less fees will be paid and fewer facilities needed/constructed. Conversely, if more development occurs than projected the City will collect additional fees but will also need to construct additional facilities to mitigate the impact on City services.

“Finally, we note that due to the lack of outside sources to fund the operation and maintenance of the new parks, the park impact fee as initially proposed was reduced by half. The Nexus Study indicates that non-fee funding is also needed for Public Facilities and yet no corresponding reduction appears to be proposed for the proposed Public Facilities fee. Once adopted, the Nexus Study presumably will provide the basis for further increases up to the maximum amounts established therein and yet it is not clear when, how and on what basis the City may adopt further increases”

This comment conflates two very different concepts, capital costs and O&M (operations and maintenance) costs. In the case of parks, the City is considering the policy decision to charge a lower fee for parks because it does not plan to build (and therefore maintain) all the public parks that would be necessary to maintain the current facility standard. This is the City's prerogative and has no bearing the maximum justified fee or on how it approaches other facilities and fee categories.

In the case of public facilities, the fee is based on the existing service standard and the City plans to fully fund all required facilities and maintenance. The policy decision under consideration by the City regarding parks is irrelevant to the establishment of the maximum justified fee for public facilities. The City will meet the requirements of the Mitigation Fee Act so long as the fee revenue collected is used to fund new or expanded facilities to serve new development.

Future fee increases are not the subject of the Nexus Study, it calculates the current maximum justified fee based on the most reasonable current information. The City can increase the fee in the future at any time by making the necessary findings.

Regarding further updates, the Mitigation Fee Act requires a comprehensive update of an impact fee program every five years. The City Council must take the update into account in establishing subsequent fees. It may not charge more than the identified maximum justified fee but can charge a lower fee, or leave a lower fee in place, at its discretion.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Joey Dinh, Associate Planner

APPROVED BY: City Manager

INTRODUCE ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH APPLETREE INVESTMENT, LLC. FOR A 6-LOT SINGLE-FAMILY RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVE LOCATED AT 18755 OLD MONTEREY ROAD. (APN 764-24-061) (OLD MONTEREY-KELLY VO PROJECT)

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Community Engagement and Messaging
Infrastructure
Housing
Traffic/Transportation

GUIDING DOCUMENTS

General Plan/Housing Element

PROJECT DESCRIPTION:

Appletree Invest, LLC is requesting a Development Agreement to incorporate awarded RDCS allotments and to memorialize the RDCS public benefit commitments for five 2018-19 building allotments. The Development Agreement specifies the duration and permitted uses of the subject property, and the general location and density or intensity of uses. It also contains provisions concerning its transferability to any successor owners of the property. The Development Agreement outlines the benefits provided to the City by entering into the Agreement.

The project site is located on the southwest corner of Old Monterey Road and Mustard Avenue. The project proposes to subdivide a 1.13-acre parcel into six (6) lots to develop five (5) detached single-family dwelling units, two attached accessory dwelling units (ADUs) and associated improvements. An existing historic single-family dwelling unit is to be retained, with a new driveway and garage to be provided. The project complies with the Residential Detached Medium General Plan designation allowing up to seven

(7) dwelling units per acre. The project as proposed meets all zoning requirements and the minimum parking required for Residential single-family development.

On June 11, 2019, the Planning Commission approved a non-vesting tentative map subdividing the property into six (6) parcels to develop five (5) new single-family residences and associated improvements. Pursuant to Morgan Hill Municipal Code Section 18.116.040 (C), Consideration of proposed Development Agreement—Recommendation by Planning Commission, the Commission reviewed the required findings and has recommended the City Council approve and adopt the proposed Development Agreement. A weblink to the Planning Commission staff report and related exhibits is included as an attachment to this report.

COMMUNITY ENGAGEMENT: Involve/Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division requirements.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission adopted Resolution No.17-01 on January 10, 2017, awarding the project five (5) building allotments for the project site.

On June 11, 2019, the Planning Commission unanimously (6-0 vote, Habib absent) approved the tentative subdivision map and unanimously recommended City Council approval of the project's development agreement.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):

An environmental assessment was prepared for the project by David J. Powers & Associates, Inc. dated February 27, 2019 in conformance with the California Environmental Quality Act (CEQA). The assessment determined the project qualifies for a Class 32 In-Fill Development exemption because it meets the criteria set forth in CEQA Guidelines Section 15332(a) through 15332(e).

The Director of Community Development concludes that the proposed project, Old Monterey - Kelly Vo, is Categorically Exempt pursuant to Section 15332 of the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Development Agreement Ordinance
2. Old Monterey-Kelly Vo CC Presentation
3. Planning Commission Staff Report (Web Link)

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING
A DEVELOPMENT AGREEMENT DA2018-0001: OLD
MONTEREY- KELLY VO FOR A 6-LOT SINGLE-FAMILY
RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-
ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF
OLD MONTEREY ROAD AND MUSTARD AVE LOCATED AT
18755 OLD MONTEREY ROAD. (APN 764-24-061)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 5 building allotments for application RDCS 2016-0008: OLD MONTEREY-KELLY VO for FY 2018-2019.

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance number 1594, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code.

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide 5, single-family residential units. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 6. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing development project is a permitted use within the Residential Detached Medium zoning district and is compatible with the surrounding residential and commercial uses.

SECTION 7. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 8. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 9. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment and therefore finds the project Categorically Exempt pursuant to Class 32, Section 15332 relating to In-Fill Development Projects of the CEQA and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 11. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 12. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 13. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 96933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF SEPTEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ___ DAY OF SEPTEMBER 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

City of Morgan Hill
Ordinance No. XXXX, New Series

ATTEST:

APPROVED:

IRMA TOREZ, City Clerk

RICH CONSTANTINE, Mayor

Attachment: Development Agreement Ordinance (2437 : Development Agreement Old Monterey-Kelly Vo)

✎ CERTIFICATION ✎

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the ____ day of _____ 2019.

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

DATE: _____

IRMA TOREZ, City Clerk

Attachment: Development Agreement Ordinance (2437 : Development Agreement Old Monterey-Kelly Vo)

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

[DA2018-0001: Old Monterey-Kelly Vo]

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

APPLETREE INVESTMENT LLC

REGARDING

THE OLD MONTEREY-KELLY VO RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Development Agreement Ordinance (2437 : Development Agreement Old Monterey-Kelly Vo)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 APPLETREE INVESTMENT LLC
 REGARDING THE
 OLD MONTEREY-KELLY VO 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 Appletree Investment 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

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.

Developer currently has a legal and/or equitable interest in the Property.

Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

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:

RDCS Application RDCS2016-0008: Five (5) FY 2018-19 building allotments;

Environmental Assessment Application EA2018-0004;

Subdivision Application SD2018-0002; and,

Administrative Extension Application AAE2019-0002 which extended the exercise of allotment deadline to December 30, 2019;

The Existing Approvals are more particularly described in the CEQA Categorical Exemption Memorandum for the Old Monterey-Kelly Vo project and the resolutions adopting the Existing Approvals.

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.

On January 10, 2017, 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.

On June 11, 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 5 units in a residential subdivision project, as more particularly described in the RDCS Application RDCS2016-0008 and Subdivision Application SD2018-0002 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 1.13 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.**

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.

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.

APPLICABLE LAW

2.01 **Applicable Law—Generally.**

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):

All the provisions, terms and conditions of this Agreement.

Existing Approvals.

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.

The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

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.

1.02 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.

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.

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.

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.

(c) 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.

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.

Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(d) 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.

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.

The Developer's RDCS application – RDCS2016-0008: Old Monterey-Kelly Vo and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission on January 10, 2017 and City Council on February 15, 2017) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(e) 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.

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.

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.

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.

(f) 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.

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.

(g) 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.

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:

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;

Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

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;

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.

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).

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.

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.

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.

PROCESSING

3.01 Processing.

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.

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**").

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.

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.

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

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.

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.

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.

(b) 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.

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.

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.

(c) 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.

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.

(d) 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**").

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.

(e) 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.

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).

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).

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.

(f) 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:

This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

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.

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.

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.

(g) 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.

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.

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.

(h) 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.

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).

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.

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.

GENERAL PROVISIONS

5.01 Miscellaneous.

Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

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.

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.

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.

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.

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.

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.

Notices.

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: Kelly Vo
Appletree Investment LLC
PO Box 32115
San Jose, CA 95132
Tel: (408) 889-4507

With a Copy To: Vince Burgos
Development Process Consultants
220 Live Oak Drive
Danville, CA 94506
Tel: (408) 421-2695

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.

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.

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.

Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

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.

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.

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.

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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Attachment: Development Agreement Ordinance (2437 : Development Agreement Old Monterey-Kelly Vo)

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

DEVELOPER:

s/ _____

s/ _____

Christina J. Turner
City Manager

Kelly Vo
Appletree Investment LLC

Date: _____

Date: 7/3/19

Corporate entities must provide a second signature:

Attest:

s/ _____

Name/Title [print]

Deputy City Clerk

Date: _____

Approved as to Form:

Adopted by Ordinance No. _____
by action of City Council on _____

s/ Cynthia L. Larkin

Donald A. Larkin
City Attorney

Date: 7-10-19

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

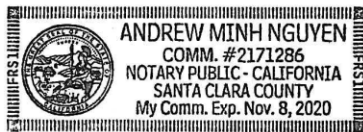
State of California)

County of Santa Clara)On July 3rd, 2019 before me, Andrew Minh Nguyen, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared Kelly Vo
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature Andrew
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Residential Development Agreement Document Date: N/A
Number of Pages: 21 Signer(s) Other Than Named Above: As above

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☒ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY ON WHICH

PROJECT IS BE LOCATED

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 1 AND 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MORGAN HILL RANCH MAP NO. 3", WHICH WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 21, 1892 IN BOOK G OF MAPS, PAGES 20 AND 21 AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF MADRONE ROAD, AT THE NORTHERNMOST CORNER OF LOTS 1, AS SAID ROAD AND LOT ARE SHOWN ON THE MAP ABOVE REFERRED TO; THENCE FROM SAID POINT OF BEGINNING, SOUTH 57° 58' WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 1 FOR A DISTANCE OF 188.95 FEET TO THE NORTHERNMOST CORNER OF THAT CERTAIN 0.646 ACRE TRACT OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO JAMES J. CAMPOLI, ET UX, RECORDED FEBRUARY 15, 1961 IN BOOK 5072, PAGE 709 OF OFFICIAL RECORDS; THENCE SOUTH 38° 36' EAST ALONG THE NORTHWESTERLY LINE OF SAID 0.646 ACRE TRACT FOR A DISTANCE OF 295.27 FEET TO THE EASTERNMOST CORNER THEREOF IN THE NORTHWESTERLY LINE OF THAT CERTAIN 5.551 ACRE TRACT OF LAND DESCRIBED AS PARCEL ONE IN THE DEED TO NICK RIZZI, ET UX, RECORDED JUNE 13, 1944 IN BOOK 1206, PAGE 111 OF OFFICIAL RECORDS; THENCE NORTH 55° 22' EAST ALONG THE NORTHWESTERLY LINE OF SAID 5.551 ACRE TRACT, FOR A DISTANCE OF 188.42 FEET TO THE NORTHERNMOST CORNER THEREOF IN SAID SOUTHWESTERLY LINE OF MADRONE ROAD; THENCE NORTH 38° 45' WEST ALONG SAID LAST MENTIONED LINE 285.12 FEET TO THE POINT OF BEGINNING.

Attachment: Development Agreement Ordinance (2437 : Development Agreement Old Monterey-Kelly Vo)

TRACT NO. 10215
873 N 0

(10)

P.M. 040-M-21

873-M-9

P.M.510-M-3
MADRONE RD.)

ROAD

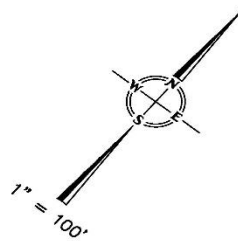
BOOK 764	PAGE 24
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PAGE
24

This is a detailed plat map of a portion of the Morgan Hill, California, showing various tracts, lots, and roads. The map includes tracts 10318, 10260, 10261, and 10262, along with lots 1 through 32. Roads shown include Avenue, Paloma Drive, Sanchez Drive, and various local streets like Mustard, Campoli, Bonita, and Nutmeg. The map also shows the boundaries of the County of Santa Clara and the City of Morgan Hill. A scale bar indicates distances in feet and miles.

Tracts and Lots:

- TRACT NO. 10318:** 887-M-41, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570, 580, 590, 600, 610, 620, 630, 640, 650, 660, 670, 680, 690, 700, 710, 720, 730, 740, 750, 760, 770, 780, 790, 800, 810, 820, 830, 840, 850, 860, 870, 880, 890, 900, 910, 920, 930, 940, 950, 960, 970, 980, 990, 1000, 1010, 1020, 1030, 1040, 1050, 1060, 1070, 1080, 1090, 1100, 1110, 1120, 1130, 1140, 1150, 1160, 1170, 1180, 1190, 1200, 1210, 1220, 1230, 1240, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1340, 1350, 1360, 1370, 1380, 1390, 1400, 1410, 1420, 1430, 1440, 1450, 1460, 1470, 1480, 1490, 1500, 1510, 1520, 1530, 1540, 1550, 1560, 1570, 1580, 1590, 1600, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, 1700, 1710, 1720, 1730, 1740, 1750, 1760, 1770, 1780, 1790, 1800, 1810, 1820, 1830, 1840, 1850, 1860, 1870, 1880, 1890, 1900, 1910, 1920, 1930, 1940, 1950, 1960, 1970, 1980, 1990, 2000, 2010, 2020, 2030, 2040, 2050, 2060, 2070, 2080, 2090, 2100, 2110, 2120, 2130, 2140, 2150, 2160, 2170, 2180, 2190, 2200, 2210, 2220, 2230, 2240, 2250, 2260, 2270, 2280, 2290, 2300, 2310, 2320, 2330, 2340, 2350, 2360, 2370, 2380, 2390, 2400, 2410, 2420, 2430, 2440, 2450, 2460, 2470, 2480, 2490, 2500, 2510, 2520, 2530, 2540, 2550, 2560, 2570, 2580, 2590, 2600, 2610, 2620, 2630, 2640, 2650, 2660, 2670, 2680, 2690, 2700, 2710, 2720, 2730, 2740, 2750, 2760, 2770, 2780, 2790, 2800, 2810, 2820, 2830, 2840, 2850, 2860, 2870, 2880, 2890, 2900, 2910, 2920, 2930, 2940, 2950, 2960, 2970, 2980, 2990, 3000, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3080, 3090, 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, 3180, 3190, 3200, 3210, 3220, 3230, 3240, 3250, 3260, 3270, 3280, 3290, 3300, 3310, 3320, 3330, 3340, 3350, 3360, 3370, 3380, 3390, 3400, 3410, 3420, 3430, 3440, 3450, 3460, 3470, 3480, 3490, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580, 3590, 3600, 3610, 3620, 3630, 3640, 3650, 3660, 3670, 3680, 3690, 3700, 3710, 3720, 3730, 3740, 3750, 3760, 3770, 3780, 3790, 3800, 3810, 3820, 3830, 3840, 3850, 3860, 3870, 3880, 3890, 3900, 3910, 3920, 3930, 3940, 3950, 3960, 3970, 3980, 3990, 4000, 4010, 4020, 4030, 4040, 4050, 4060, 4070, 4080, 4090, 4100, 4110, 4120, 4130, 4140, 4150, 4160, 4170, 4180, 4190, 4200, 4210, 4220, 4230, 4240, 4250, 4260, 4270, 4280, 4290, 4300, 4310, 4320, 4330, 4340, 4350, 4360, 4370, 4380, 4390, 4400, 4410, 4420, 4430, 4440, 4450, 4460, 4470, 4480, 4490, 4500, 4510, 4520, 4530, 4540, 4550, 4560, 4570, 4580, 4590, 4600, 4610, 4620, 4630, 4640, 4650, 4660, 4670, 4680, 4690, 4700, 4710, 4720, 4730, 4740, 4750, 4760, 4770, 4780, 4790, 4800, 4810, 4820, 4830, 4840, 4850, 4860, 4870, 4880, 4890, 4900, 4910, 4920, 4930, 4940, 4950, 4960, 4970, 4980, 4990, 5000, 5010, 5020, 5030, 5040, 5050, 5060, 5070, 5080, 5090, 5100, 5110, 5120, 5130, 5140, 5150, 5160, 5170, 5180, 5190, 5200, 5210, 5220, 5230, 5240, 5250, 5260, 5270, 5280, 5290, 5300, 5310, 5320, 5330, 5340, 5350, 5360, 5370, 5380, 5390, 5400, 5410, 5420, 5430, 5440, 5450, 5460, 5470, 5480, 5490, 5500, 5510, 5520, 5530, 5540, 5550, 5560, 5570, 5580, 5590, 5600, 5610, 5620, 5630, 5640, 5650, 5660, 5670, 5680, 5690, 5700, 5710, 5720, 5730, 5740, 5750, 5760, 5770, 5780, 5790, 5800, 5810, 5820, 5830, 5840, 5850, 5860, 5870, 5880, 5890, 5900, 5910, 5920, 5930, 5940, 5950, 5960, 5970, 5980, 5990, 6000, 6010, 6020, 6030, 6040, 6050, 6060, 6070, 6080, 6090, 6100, 6110, 6120, 6130, 6140, 6150, 6160, 6170, 6180, 6190, 6200, 6210, 6220, 6230, 6240, 6250, 6260, 6270, 6280, 6290, 6300, 6310, 6320, 6330, 6340, 6350, 6360, 6370, 6380, 6390, 6400, 6410, 6420, 6430, 6440, 6450, 6460, 6470, 6480, 6490, 6500, 6510, 6520, 6530, 6540, 6550, 6560, 6570, 6580, 6590



784 DET. MAP 252
LAWRENCE E. STONE - ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2017-2018

EXHIBIT B**DESCRIPTION OF PROJECT**

**RDCS APPLICATION NO. RDCS2016-0008: OLD MONTEREY-KELLY VO
FOR A RESIDENTIAL DEVELOPMENT PROJECT THAT INCLUDES SIX LOTS,
WITH FIVE NEW SINGLE FAMILY DWELLING UNITS AND ONE EXISTING
DWELLING UNIT.**

Attachment: Development Agreement Ordinance (2437 : Development Agreement Old Monterey-Kelly Vo)

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to the Development proposed in the RDCS application date September 1st, 2016 or RDCS application #2016-0008 and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.	Prior to the issuance of building permit	\$4,950 per unit
B.4	Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within 3/4 miles of the project site or to a middle school or high school up to \$4,950 per unit. Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department.	Prior to the issuance of building permit	\$4,950 per unit

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Open Space			
B.4.b	TDC for projects (<25 units)	The project commits to double TDC's	Prior to building permit final	Double TDC fee per unit, applicable rate applies at time of payment.
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines	Property owner or designee agrees to fill in 1 water line, 1 sewer line, 1 stormdrain, and 1 fire. The required utility easements shall be obtained prior to approval of the Final/Parcel Map and public improvement plans.	Prior to Site Review Approval	N/A
	Public Facilities			
B.2.b	Drainage concept consistent with City's storm drain system	Project drainage concept will be consistent with City's Storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system)	Prior to Improvement Plan approval	N/A
B.2.f	Excess public improvements	Applicant will provide public improvements at \$4,400/unit.	Prior to Improvement Plan approval	\$4,400 per unit
B.2.g	Contribution to RDCS Capital Improvements fund	Applicant will contribute \$1,100 per unit to the RDCS Capital Improvement Program Fund	Prior to Improvement Plan approval	\$1,100 per unit
	Parks and Paths			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1	Park in-lieu fee (<50 units)	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to Parcel Map Approval	See Chapter 17.28 for fee calculation
B.2	On-site recreational amenities			
B.3	Bicycle/equestrian/pedestrian paths	Project shall provide at least 0.15 miles of Class II bike lanes. Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed	Prior to issuance of Offsite Improvements	N/A
B.7	Additional park fees (in-lieu fee) for projects (<50 units)	In addition to standard park fees, project shall pay the lesser of either twelve times the in-lieu park fees or \$4,400 per unit.	Prior to Parcel Map Approval	Twelve times the in-lieu park fees or \$4,400 per unit. Whichever is less.
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	Applicant commits to 2 secondary dwelling units for 2 points.	Prior to Site Review Approval	N/A
B.2.a	Standard Housing Fee	Applicant agrees to pay the standard housing fee	Prior to Building Permit final	\$12,000
B.2.b	Double Housing Fee	Applicant agrees to pay double the standard housing fee.	Prior to Building Permit final	\$24,000
	Quality of Construction Standards			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	OSB/Plywood wrap	The project will include the installation of OSB/Plywood wrap.	Prior to Building Permit issuance	N/A
B.1.b	Foundations	The project will utilize alternate materials in the concrete mix such as fly ash, slag, silica fume or rice hull to achieve a 20% reeducation of cement.	Prior to Building Permit issuance	N/A
B.1.c	Wallboard	The project will include the installation of light weight wallboard for all walls excluding code requirement for fire walls.	Prior to Building Permit issuance	N/A
B.1.d	Electrical raceway	The project will include installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Prior to Building Permit issuance	N/A
B.1.f	90% high efficiency fan forced heating	The project will include the installation of 90% high efficiency fan forced heating	Prior to Building Permit issuance	N/A
B.1.g	Zoned heating and air conditioning	The project will include the installation of zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Prior to Building Permit issuance	N/A
B.1.h	Multiple efficiency improvements	The project will include: 1) the installation of listed sound attenuated materials in walls that adjoin a	Prior to Building Permit issuance	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		bathroom and/or bedroom walls, 2) installation of high efficiency energy star water heater with energy factor of 0.70, 3) the installation of ultra-high efficiency or dual flush toilet, and 4) installation of rain sensor monitor on irrigation system.		
	Safety and Security			
B.1.a	Fire proof safe	Project will install a fireproof safe in each unit.	Prior to Building Permit issuance	N/A
B.1.b	First aid kit	Project will provide a first aid kit with poison control document in the kitchen of each unit.	Prior to Building Permit issuance	N/A
B.1.d	Outdoor lighting	Applicant commits to providing lighting on all buildings that meet Police Department specifications, California Electrical Code and MHMC. Applicant will install motion detector light on each unit.	Prior to Building Permit issuance	N/A
B.1.f	Illuminated address numbers	Applicant commits to installing lighted address numbers on each building and illuminated unit numbers on each dwelling unit. Applicant commits to installing painted reflective curb numbers where possible.	Prior to Building Permit issuance	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Applicant commits to utilizing the design principles of CPTED of natural surveillance, territorial	Prior to Building Permit issuance	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		reinforcement for each dwelling unit.		
B.3	Lockable hardware	Applicant commits to installing lockable hardware on all side yard and patio gates.	Prior to Building Permit issuance	N/A
B.4	Central Monitoring	Project will install an intrusion, fire alarm, and heat detector system, monitored by a central station. Project will provide a one year monitoring contract with the purchase of each unit.	Prior to Building Permit issuance	N/A
	Livable Communities			
B.6	Architectural variation	Applicant will provide porches, two different roof lines, architectural profiles and massing and consistent architectural relief and detaining per stated requirements: a. Uses porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project on at least 25% of units to promote a neighborhood feel. b. Uses at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc. c. Uses architecture and profiles and massing that are compatible and works with the existing surrounding	Prior to Site Review Approval	N/A

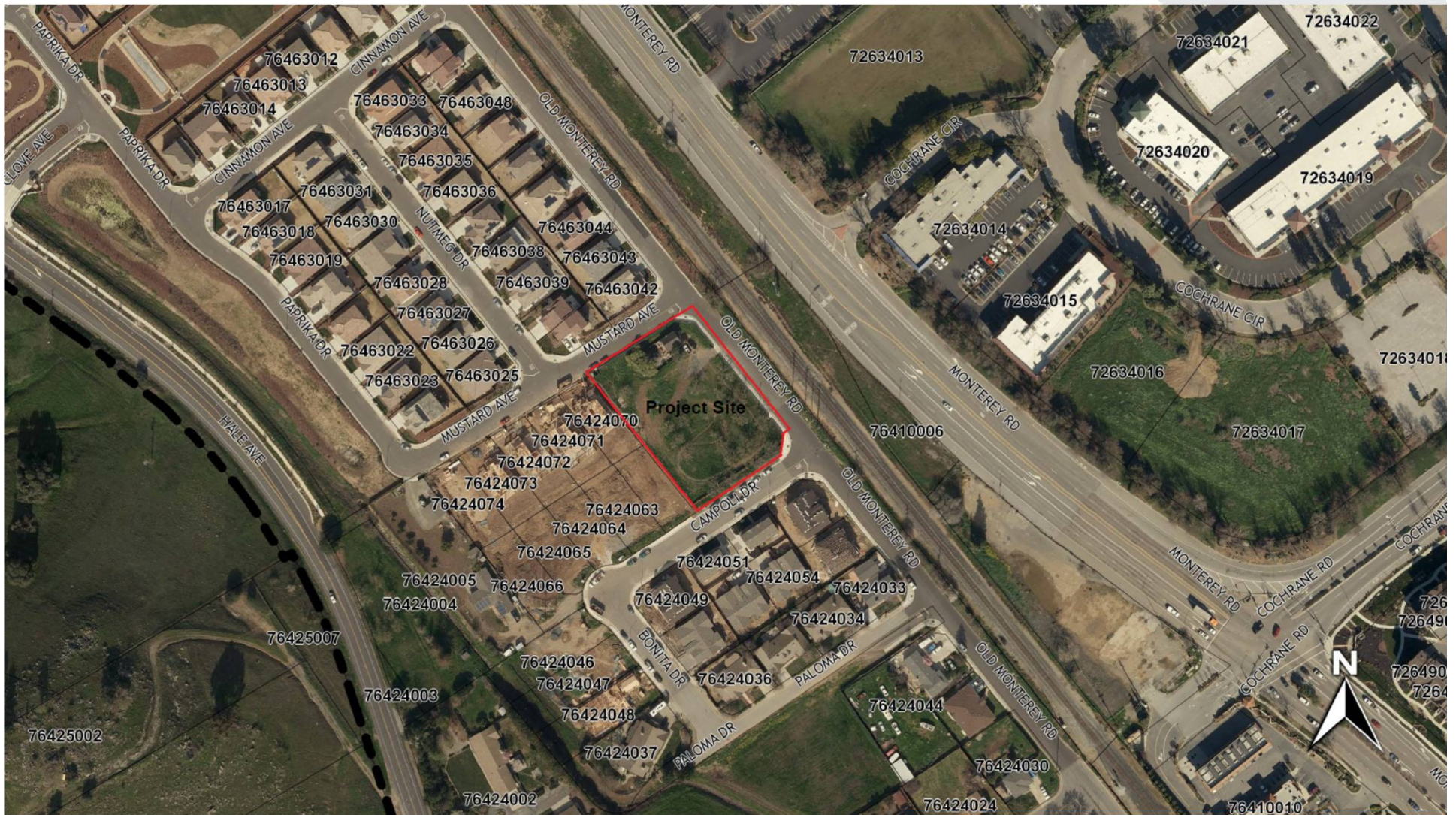
Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		neighborhoods. Applicable only where a project adjoins an existing neighborhood on at least one side or twenty-five percent of the project's frontage. d. Provides a consistent level of architectural relief and detailing on all four building elevations. Where two-story rear and/or side-yard building elevations occur, architectural relief shall include some third dimensional design element such as bay windows, balconies, covered porches, decorative trellis, etc. In addition, each standard trim and base color must represent no more than 15% (project size permitting) of the project.		
B.7	Maximizes privacy	Windows on sides will alternate. Noise producing elements [i.e. air conditioners] are located away from the property lines.	Prior to Site Review Approval	N/A



Development Agreement DA2018-0001: Old Monterey-Kelly Vo



Project Location



2016 RDCS



1. RDCS

Five Units - Fiscal Year 2018/2019

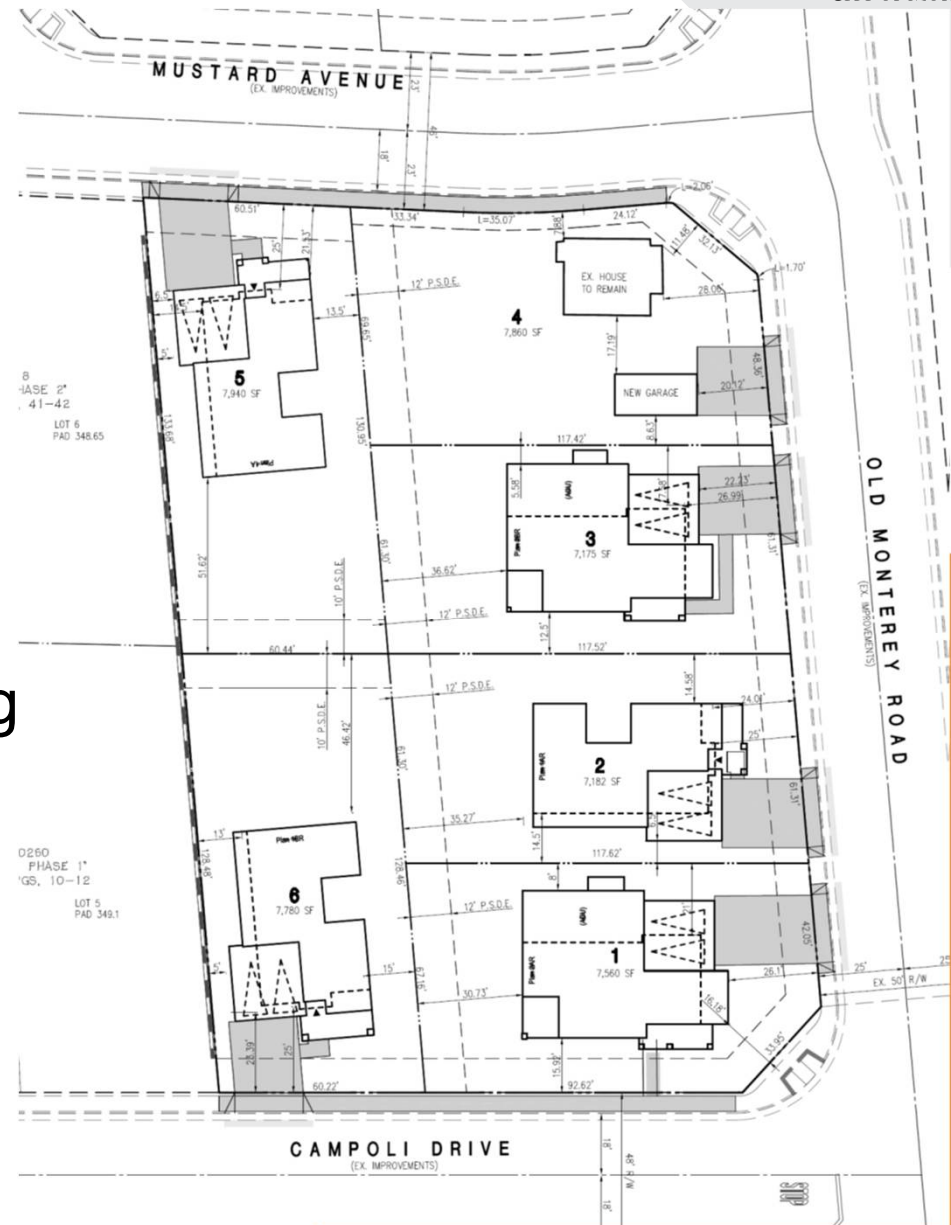
2. Zoning

- Residential Detached Medium (7 du/ac)
- Residential Detached Medium (RDM-7,000)

Project Proposal



- 6-lot subdivision
- 5 new single-family residences
- 2 attached ADUs
- Existing historic single-family dwelling to remain



Project Consistency



1. General Plan

Policy CNF-2.1 – Orderly Development

Policy CNF-2.3 – Quality of Life

Policy CNF-3.1 – RDCS purpose

Policy CNF-8.7 – Design Sensitivity

Policy CNF-11.5 – Outside Connections

2. Zoning

RDM-7,000 Site Standards	Requirement	Proposed	Consistency
Lot Area	7,000 square feet; 7,500 square feet for corner lots	7,175 min square feet; 7,560 min square feet corner lots	Yes
Lot Width	60 feet	60.22 feet min	Yes
Lot Depth	85 feet	117.42 feet min	Yes

CEQA / Community Engagement



CEQA

- Categorically Exempt per Section 15332

Notice for Hearing - Public notification including site signage, newspaper notice, and direct mail to property owners within 300 feet of the project site.

Recommendation



1. Open and Close Public Hearing
2. Adopt Ordinance recommending approval of the Development Agreement

Thank You





CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

APPEAL OF THE PLANNING COMMISSION DISTRIBUTION OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSC) BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21. THE APPLICANT REQUESTED 246 RESIDENTIAL BUILDING ALLOTMENTS AND WAS DENIED RDSC BUILDING ALLOTMENTS BY THE PLANNING COMMISSION. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 728-30-001, IS LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE. (FILE NO. AAE2019-0007 (RDSC2019-0006) HALF-DIVIDEND (FORMERLY BROOKFIELD))

RECOMMENDATION(S)

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt resolution denying the appeal and reaffirming the distribution of the Residential Development Control System (RDSC) Building Allotments for Fiscal Year 2020-21.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Infrastructure
Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Mission View Investors, LLC (appellant) is appealing the final award (distribution) of building allotments as issued by the Planning Commission on July 23, 2019, using the appeal process set forth in Chapter 18.112 (Appeals) of the Morgan Hill Municipal Code. Any decision of the Planning Commission may be appealed to the City Council. The appellants submitted their appeal request within the ten-day appeal period set forth in Chapter 18.112.

This year's Residential Development Control System (RDSC) process was very competitive with eight applications, seven qualifying projects (one project did not receive a minimum qualifying score), and two ongoing projects, requesting a total of 504 allotments, with only 125 allotments available in this year's competition, 40 of which

were committed to ongoing projects.

Planning Commission Action

The Planning Commission approved Resolution No. 19-10 (Attachment 2) at the July 23, 2019 meeting, awarding residential building allotments for Fiscal Year (FY) 2020-21 to the RDCS applicants. As part of the award process, the Planning Commission awarded a specific number of building allotments to competing projects, as authorized by City Council Resolution No. 18-070 (Attachment 3) and Section 18.156.120 (RDCS Procedures) of the Morgan Hill Municipal Code. For the FY 2020-21 competition, 125 residential building allotments were distributed among eight projects. Two projects were entitled to receive 40 ongoing allotments, leaving 85 allotments available for the remaining applicants which received qualifying scores.

Residential Development Control System (RDCS) Project Review

1. RDCS2019-0006: HALF – DIVIDEND (FORMERLY BROOKFIELD)

Final Score: 163

Request: 246 Allotments

Build-out: 247 units

The appellant has filed an appeal of the Planning Commission building allotment award because RDCS2019-006 (the “Project”) received a qualifying score but did not receive an RDCS award. The justification for the appeal is provided (Attachment 4) and the issues raised by the appellant are addressed as follows:

- a. *The Project was in conformance and was able to compete in this year’s Measure S Competition.*

The Project was found to be consistent with the Zoning Code and General Plan on March 25, 2019 and eligible to participate in the 2018 RDCS competition.

- b. *The Project scored 163 points in the competition and was qualified to be awarded building allotments.*

The Planning Commission adopted Resolution No. 19-08 on June 11, 2019 (Attachment 5), approving the final scores for the 2018 RDCS applications. The Project received a final score of 163 points. This was a qualifying score.

- c. *There is no requirement that allotments be based on scoring. As long as the minimum score of 160 is met, a project could be awarded allotments. The allotments were to be based upon what projects were of the highest quality and best for the community.*

A project is eligible to receive allotments when a minimum score of 160 points is achieved. The Planning Commission has the flexibility to distribute the allotments to the various projects based on scoring, an increased demand for particular housing type, and whether the project achieves the goals of the General Plan. The Planning

Commission determined that the Project, although it received a qualifying score, was one of the lowest scoring projects within the RDCS competition and the project design and score could be improved to better align with the General Plan goals and requirements of the RDCS Competition Manual.

- d. *The Project scored 32 points in Project Quality and was the only competing project that scored above 31 points in Project Quality that was not awarded allotments.*

The RDCS Manual provides nine Objectives for projects to obtain points. Projects have multiple pathways to maximize their scores and may earn points from criteria that are most appropriate for the project type. The Planning Commission reviews the entire project when determining a building allotment award and does not focus on one main Objective. The Planning Commission considers the City's housing needs, the overall RDCS score and General Plan goals.

- e. *The denial of allotments was mistaken and not supported by the facts nor the historical position of the Planning Commission in past years.*

Through the competition process, the Planning Commission understood that the property owners of this site had been actively marketing the residential property during the RDCS competition cycle and the potential buyers had not been able to benefit completely from the RDCS process, thus resulting in a lower scoring project.

An application was submitted for the pre-application process by Trumark Properties. Several suggestions were made to improve the score; however, for the Final RDCS submittal Brookfield Residential entered into contract with the owner and submitted a redesigned project. During the final stages of the RDCS process, the property owner authorized Richard Oliver (the appellant) to act on their behalf to complete the process.

During the RDCS process, the Planning Commission did carefully and deliberately consider the points and potential award of allotments for the Project. During the initial review of project scores at the May 28, 2019 Planning Commission meeting, staff had recommended a score of 157 points, stating that the Project had not met some of the Project Quality objectives outlined in the RDCS Manual. At the June 11, 2019 meeting, the Planning Commission reconsidered the points for the Project. Staff had recommended an increase in points to 159 (correction in Proximity to Public Parks); however, a correction to Project Quality was not recommended. The appellant was requesting four points within the Project Quality objective to obtain a qualifying score. After considerable discussion, the Planning Commission awarded the Project the requested four points.

The RDCS recommended distribution of allotments was presented to the Planning Commission at the July 23, 2019 meeting. Staff explained that the Planning and Housing teams had been meeting with Mr. Oliver to discuss both the Preliminary RDCS submittal and the Final RDCS design to see how the plans would work with how he envisioned development of the site. Mr. Oliver had indicated that he was working to

redesign the site plan to potentially incorporate a Treehouse InterGenerational neighborhood into the Project. Staff raised concerns that the project proposal was building at the lower density range of 9.2 dwelling units to the acre. This vacant residentially zoned property is a significant opportunity for the City to achieve a higher density development, with smaller units that meet the demand of the “missing middle”. To allow a development to be designed and built at the lowest end of a density range in this housing crisis would be contrary to housing laws in place today or being considered by the legislature. Because the project design and score could be improved to better align with the General Plan goals and the requirements of the RDCS Competition Manual, staff did not recommend an award for the Project.

Mr. Oliver requested that the Planning Commission consider an award of two allotments to demonstrate to his joint venture partner that the Project would be supported by the City and allow the Project to start. The Planning Commission recognized that the Project did receive a qualifying score to receive building allotments, however, it was one of the lowest scoring projects. In addition, the Planning Commission understood that the plan would be undergoing significant design changes and they believed it needed to be changed to better align with the General Plan goals and requirements of the RDCS Competition Manual. Furthermore, because available allotments were reduced to 85 for projects competing this year, Planning Commission discussed the necessity to take away allotments from another, higher-scoring project in order to award any allotments to the Half-Dividend project. Although Mr. Oliver has another project in the competition which received allotments, he was unwilling to give up any of those to transfer to the Half-Dividend project. An RDCS award was not granted.

Conclusion

The appellant is requesting that the City Council provide a building allotment award as requested in the Project’s RDCS application. The initial RDCS application requested multi-year allotments for full buildout of 247 units. Similar to last year, the Planning Commission found that the required findings to grant multi-year awards could not be made for any of the several projects that requested multi-year awards in this competition, including the need to ensure that a sufficient number of allotments are available each year for non-multi-year allotted projects, in addition to affordable allotments, to allow for a yearly competition. In addition, they found that other factors, such as Regional Housing Need Allocation requirements and lack of affordability provided by the RDCS projects also impact the ability to make findings for multi-year allotments. As discussed, facts have not been provided to adequately support the request. For reasons set forth above, it is recommended that the City Council adopt a resolution (Attachment 1) denying the appeal.

COMMUNITY ENGAGEMENT: Involve

The Planning Commission awarded building allotments at its meeting on July 23, 2019. A notice of the appeal hearing was mailed to the property owners within 600 feet of the subject property and published in the Morgan Hill Times. In addition, all developers taking part in the RDCS competition were notified of the pending appeals.

ALTERNATIVE ACTIONS:

The Council could decide to grant the appeal and award two or more allotments to the Project. In doing this, the applicant would have the ability to apply for entitlements for the Project site.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission finalized project scores on July 11, 2019 and awarded residential building allotments on July 23, 2019. The staff reports from the Planning Commission meetings have been provided (Attachments 6, 7 and 8).

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

California Environmental Quality Act (CEQA):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the RDCS, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH#2015022074). The City of Morgan Hill must conduct environmental analysis before a project is approved. Award of allotments is not considered approval of a project, but rather authorizes an applicant to apply for entitlements. Environmental analysis shall be completed and considered by the appropriate decision-making body prior to granting of any entitlements, including but not limited to a tentative subdivision map, design review, a Development Agreement, or a building or grading permit.

LINKS/ATTACHMENTS:

1. CC Resolution- Appeal
2. PC Resolution No. 19-10- 2018 RDCS- Award of Allotments
3. CC Resolution No. 18-070- Establish FY 20-21 allotments
4. Appeal Letter
5. PC Resolution No. 19-08 2018 RDCS- Final Scores
6. May 28, 2019 Planning Commission Staff Report and Exhibits (web link)
7. June 11, 2019 Planning Commission Staff Report and Exhibits (web link)
8. July 23, 2019 Planning Commission Staff Report and Exhibits (web link)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEAL SUBMITTED BY MISSION VIEW INVESTORS, LLC FOR RDCS2019-0006: HALF-DIVIDEND (FORMERLY BROOKFIELD) AND REAFFIRMING THE DISTRIBUTION OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21

WHEREAS, the people of the City of Morgan Hill approved and enacted by initiative measure that certain Residential Development Control System codified at Chapter 18.156 (Residential Development Control System) of Title 18 (Zoning) of the Morgan Hill Municipal Code (the "RDCS"); and

WHEREAS, the City Council determined that the Planning Commission may award RDCS residential building allotments based on scoring of projects using the criteria established within the RDCS Competition Manual and as deemed necessary to respond to changes in the housing market (such as changes in the build-out rate for existing projects, lack of applications in set-aside categories, and increased demand for particular housing types, etc.); and

WHEREAS, building allotment requests pursuant to the RDCS were made for Fiscal Year 2020-21 and such requests were considered by the Planning Commission at its regular meeting of July 23, 2019, at which time said Planning Commission distributed the RDCS building allotments in accordance with City Council Resolution No. 18-070; and

WHEREAS, Mission View Investors, LLC for RDCS2019-0006: Half-Dividend (formerly Brookfield), filed an appeal of the Planning Commission's decision to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on these appeals, the City Council of the City of Morgan Hill conducted a *de novo* appeal hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THIS APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THIS APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Following are the relevant facts in connection with Application RDCS2019-0006:

- A. On March 8, 2019, City received an RDCS Application for 246 residential building allotments on undeveloped property located at Half Road and Mission View Drive;
- B. The Planning Commission has determined that although the project received a qualifying score to receive RDCS residential allotments, it is one of the lowest scoring project within the RDCS competition and the project design and score

should be improved to better align with the General Plan goals and requirements of the RDCS Competition Manual.

SECTION 2. Based upon the above facts, the City Council finds as follows:

- A. An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the RDCS, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074). The City of Morgan Hill must conduct environmental analysis before a project is approved. Award of allotments is not considered approval of a project, but rather authorizes an applicant to apply for entitlements. Environmental analysis shall be completed and considered by the appropriate decision-making body prior to granting of any entitlements, including but not limited to a tentative subdivision map, design review, a Development Agreement, or a building or grading permit; and
- B. The facts set forth above are true and correct and new facts have not been provided to the City Council through the public hearing conducted on the appeal related to the Application that negate or materially alter the relevant facts set forth above or that would otherwise support a determination that the appeal should be granted, such that the City Council finds that:
 - 1. The Mission View Investors LLC project (RDCS20019-0006: Half-Dividend (formerly Brookfield)) was one of the lowest scoring projects and is not entitled to building allotments.

SECTION 3. Based upon the above facts and findings the City Council determines as follows:

- A. The distribution of allotments granted by the Planning Commission on July 23, 2019 were made consistent with City Council Resolution 18-070 and Morgan Hill Municipal Code Section 18.156.120. Therefore, the appeal submitted regarding the RDCS Building Allotments for Fiscal Year 2020-21 should not be approved.
- B. The Planning Commission distribution of allotments as set forth in Planning Commission Resolution No. 19-10, attached hereto as Exhibit A and incorporated herein by this reference, is hereby reaffirmed and approved.

SECTION 5. For the reasons set forth above, the appeal is **DENIED**.

**PASSED AND ADOPTED THIS ____ DAY OF _____, 2019
AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING
VOTE:**

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

DATE: _____

Rich Constantine, MAYOR

Attachment: CC Resolution- Appeal (2445 : RDCS Appeal)

∞ CERTIFICATION ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on _____, 201_.

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

DATE: _____

Attachment: CC Resolution- Appeal (2445 : RDCS Appeal)

EXHIBIT A

RESOLUTION NO. 19-10

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING THE
BUILDING ALLOTMENT FOR THE RESIDENTIAL
DEVELOPMENT CONTROL SYSTEM (RDSCS)
OPEN/MARKET COMPETITION FOR FISCAL YEAR
2020/2021**

WHEREAS, the Planning Commission has received eight project applications requesting residential building allotments pursuant to Chapter 18.156 (Residential Development Control System) of the Morgan Hill Municipal Code; and

WHEREAS, each residential project has been evaluated according to a specific set of standards and criteria established in the RDSCS Competition Manual; and

WHEREAS, RDSCS2019-0011 Watsonville-Blackrock did not receive a qualifying RDSCS score to be eligible to receive RDSCS residential building allotments; and

WHEREAS, the City Council has determined that the Planning Commission may award RDSCS residential building allotments based on scoring of projects using the criteria established within the RDSCS Competition Manual and as deemed necessary to respond to changes in the housing market (such as changes in the build-out rate for existing projects, lack of applications in set-aside categories, and increased demand for particular housing types, etc.); and

WHEREAS, the Planning Commission has determined that although RDSCS2019-0016 Half-Brookfield has received a qualifying score to receive RDSCS residential allotments, it is one of the lowest scoring projects within the RDSCS competition and the project design and score can be improved to better align with the General Plan goals and requirements of the RDSCS Competition Manual; and,

WHEREAS, testimony received at a duly-noticed public hearings, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, on July 23, 2019, the Planning Commission did duly adopt a Resolution approving the distribution for Residential Development Control System building allotments for Fiscal Year 2020/2021; and

NOW, THEREFORE, BE IT RESOLVED BY THE MORGAN HILL PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to City Council Resolution No. 18-070, the Planning Commission may adjust the distribution of allotments, which have been adjusted as follows:

Attachment: CC Resolution- Appeal (2445 : RDSCS Appeal)

Fiscal Year 2020/2021

Competition Category	Allotment
Micro	4
Small	11
Multi-Family Rental	0
Open/Market	70
Senior Housing	0
Monterey Corridor	0
Custom Lots	0
On-Going	40
Unassigned	85
Total	125

SECTION 2: Pursuant to the Residential Development Control System, the award and distribution of residential building allotments for the 2018 RDCS Competition shall be as follows:

Fiscal Year 2020/2021

Project	Allotment Award
On-Going	
RDCS2016-0015 Cochrane-Borello	25
RDCS2017-0012 E. Dunne-Young	15
Open/Market Competitors	
RDCS2019-0004 Monterey-Dobkin	34
RDCS2019-0005 Monterey-Lucky Shing	24
RDCS2019-0007 Spring-Giancola	12
RDCS2019-0002 Llagas/Sabini-Strolata	1
RDCS2019-0008 Dakota-Dunne	3
RDCS2019-0003 Tennant-Osito Holdings	11
Total	125

PASSED AND ADOPTED THIS 23rd DAY OF JULY 2019, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS: MUNOZ-MORRIS, HABIB,
GONZALEZ-ESCOTO, KUMAR
DOWNEY

NOES: COMMISSIONERS: MUELLER

City of Morgan Hill
Resolution No. 19-10
Page 3 of 3

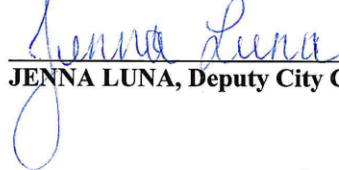
ABSTAIN: COMMISSIONERS:

NONE

ABSENT: COMMISSIONERS:

TANDA

ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



JUAN MIGUEL MUNOZ-MORRIS, Chair

Attachment: CC Resolution- Appeal (2445 : RDCS Appeal)

RESOLUTION NO. 19-10

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING THE BUILDING ALLOTMENT FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) OPEN/MARKET COMPETITION FOR FISCAL YEAR 2020/2021

WHEREAS, the Planning Commission has received eight project applications requesting residential building allotments pursuant to Chapter 18.156 (Residential Development Control System) of the Morgan Hill Municipal Code; and

WHEREAS, each residential project has been evaluated according to a specific set of standards and criteria established in the RDCS Competition Manual; and

WHEREAS, RDCS2019-00011 Watsonville-Blackrock did not receive a qualifying RDCS score to be eligible to receive RDCS residential building allotments; and

WHEREAS, the City Council has determined that the Planning Commission may award RDCS residential building allotments based on scoring of projects using the criteria established within the RDCS Competition Manual and as deemed necessary to respond to changes in the housing market (such as changes in the build-out rate for existing projects, lack of applications in set-aside categories, and increased demand for particular housing types, etc.); and

WHEREAS, the Planning Commission has determined that although RDCS2019-0016 Half-Brookfield has received a qualifying score to receive RDCS residential allotments, it is one of the lowest scoring projects within the RDCS competition and the project design and score can be improved to better align with the General Plan goals and requirements of the RDCS Competition Manual; and,

WHEREAS, testimony received at a duly-noticed public hearings, along with exhibits and drawings and other materials have been considered in the review process; and

WHEREAS, on July 23, 2019, the Planning Commission did duly adopt a Resolution approving the distribution for Residential Development Control System building allotments for Fiscal Year 2020/2021; and

NOW, THEREFORE, BE IT RESOLVED BY THE MORGAN HILL PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to City Council Resolution No. 18-070, the Planning Commission may adjust the distribution of allotments, which have been adjusted as follows:

Fiscal Year 2020/2021

Competition Category	Allotment
Micro	4
Small	11
Multi-Family Rental	0
Open/Market	70
Senior Housing	0
Monterey Corridor	0
Custom Lots	0
On-Going	40
Unassigned	85
Total	125

SECTION 2: Pursuant to the Residential Development Control System, the award and distribution of residential building allotments for the 2018 RDCS Competition shall be as follows:

Fiscal Year 2020/2021

Project	Allotment Award
On-Going	
RDCS2016-0015 Cochrane-Borello	25
RDCS2017-0012 E. Dunne-Young	15
Open/Market Competitors	
RDCS2019-0004 Monterey-Dobkin	34
RDCS2019-0005 Monterey-Lucky Shing	24
RDCS2019-0007 Spring-Giancola	12
RDCS2019-0002 Llagas/Sabini-Strolata	1
RDCS2019-0008 Dakota-Dunne	3
RDCS2019-0003 Tennant-Osito Holdings	11
Total	125

PASSED AND ADOPTED THIS 23rd DAY OF JULY 2019, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: **COMMISSIONERS:** **MUNOZ-MORRIS, HABIB,
GONZALEZ-ESCOTO, KUMAR,
DOWNEY**

NOES: **COMMISSIONERS:** **MUELLER**

City of Morgan Hill
Resolution No. 19-10
Page 3 of 3

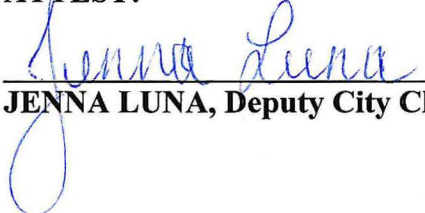
ABSTAIN: COMMISSIONERS:

NONE

ABSENT: COMMISSIONERS:

TANDA

ATTEST:



JENNA LUNA, Deputy City Clerk

APPROVED:



JUAN MIGUEL MUNOZ-MORRIS, Chair

Attachment: PC Resolution No. 19-10- 2018 RDCS- Award of Allotments (2445 : RDCS Appeal)

RESOLUTION NO. 18-070

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE AVAILABLE BUILDING ALLOTMENTS FOR FISCAL YEAR 2020/21 FOR THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION

WHEREAS, the City Council has reviewed recommendations contained in the July 25, 2018 and September 5, 2018 staff reports, recommendations of the Planning Commission, and has considered testimony received at the July 25, 2018, August 22, 2018 and September 5, 2018 public hearings conducted for this item; and

WHEREAS, Section 18.156.090 of the RDCS Ordinance provides guidance regarding the establishment of RDCS Competition Categories and identification of the number of available allotments within each Category, including ensuring that an adequate number of allotments are available for affordable housing projects; and

WHEREAS, building allotments pursuant to the City's Residential Development Control System shall be available in the 2020/21 fiscal year; and

WHEREAS, 215 building allotments within the City's Residential Development Control System shall be available in the 2020/21 fiscal year, as findings required by 18.156.110.B that necessitate a reduction in the available allotments for the 2018 RDCS competition could not be made; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL THAT:

SECTION 1: Pursuant to Sections 18.156.080 and 18.156.110 of the Morgan Hill Municipal Code, the City Council hereby authorizes a Residential Development Control System (RDCS) competition to be conducted in 2018 with 215 residential building allotments.

A. The RDCS competition authorized by this Resolution shall be for Fiscal Year 2020/21.

SECTION 2. Pursuant to Section 18.156.090 of the Municipal Code, the City Council hereby authorizes:

A. A portion of the residential allotments shall be reserved for affordable, unassigned, and on-going competition categories as outlined in "Exhibit A" attached hereto and incorporate herein by reference.

B. The Planning Commission shall award allotments based on scoring of projects using the criteria established in the RDCS Competition Manual and as deemed necessary to respond to changes in the housing market such as changes in the build-out rate for existing projects, lack of applications in competition categories, and increased demand for particular housing types, etc.

C. The RDCS Competition Manual, Section IV.E Competition Categories and Ongoing Projects, shall be modified to reflect the competition categories and distribution of building allotments as set forth in "Exhibit A".

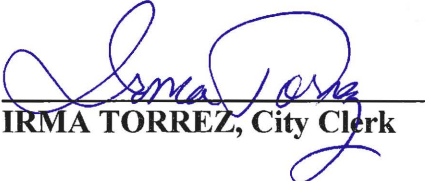
PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 5th day of September 2018 by the following vote:

AYES:	COUNCIL MEMBERS:	Steve Tate, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Larry Carr
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:


 STEVE TATE, Mayor

ATTEST:

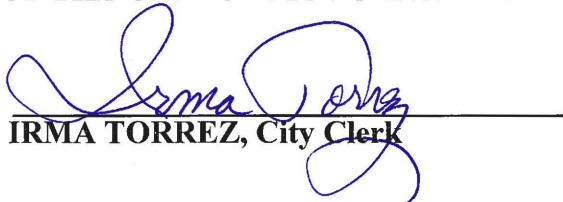

 IRMA TORREZ, City Clerk

CERTIFICATION

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 18-070, adopted by the City Council at the meeting held on September 5, 2018.

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

DATE: 9/10/2018


 IRMA TORREZ, City Clerk

Attachment: CC Resolution No. 18-070- Establish FY 20-21 allotments (2445 : RDCS Appeal)

EXHIBIT A**FISCAL YEAR 2020/21**

<u>Competition Category</u>	<u>Number of Allotments</u>
On-going Projects (Measure C)	25
On-going Projects (Measure S)	15
Unassigned	<u>85</u>
Total	125

Mission View Investors, LLC
 385 WOODVIEW AVE. #100
 MORGAN HILL, CA 95037
 408-779-4900
roliver@dividendhomes.com

August 2, 2019

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

Re: Appeal of Planning Commission Action of July 23, 2019, in denying building allotments for RDSCS 2019-0006 Half-Brookfield

Specific Action being appealed: Denial of an any building allotments for the Half-Brookfield Project, RDSCS2019-006 (the "Project") in this year's Measure S Competition.

Grounds for appeal:

1. The Project was in conformance and was able to compete in this year's Measure S Competition.
2. The Project scored 163 points in the competition and was qualified to be awarded building allotments.
3. Staff has, this past year, consistently stated that under the revised Measure S adopted procedure, there was no requirement that allotments be based upon the scoring. As long as the minimum score of 160 was met, a project could be awarded allotments. The allotments were to be based upon what projects were of the highest quality and best for the community.
4. The Project scored 32 points in Project Quality and was the only competing project that scored above 31 points in Project Quality that was not awarded allotments.
5. We be believe that the denial of allotments was mistaken and not supported by the facts nor the historical position of the planning commission in past years.

Relief Requested: Award allocations to the Half-Brookfield Project (RDSCS2019-0006) as requested in the project's RDSCS application.

Respectfully submitted,

Mission View Investors, LLC



By: Richard B. Oliver, V.P.

Attachment: Appeal Letter (2445 : RDSCS Appeal)

RESOLUTION NO. 19-08**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING FINAL
PROJECT SCORES FOR THE 2018 RESIDENTIAL
DEVELOPMENT CONTROL SYSTEM (RDCS)
COMPETITION.**

WHEREAS, the City of Morgan Hill has received applications requesting residential building allotments pursuant to Chapter 18.156 of the Morgan Hill Municipal Code; and

WHEREAS, Section 18.156.080.A of the Morgan Hill Municipal Code provides for the City to conduct a competition for allotments for development of residential units, except when the City Council cancels the competition; and

WHEREAS, the City Council determined on September 5, 2018 that a 2018 Residential Development Control System competition for residential development allotments would be held; and

WHEREAS, Section 18.156.120.E of the Morgan Hill Municipal Code further prescribes that the Community Development Director or Director's designee shall recommend point assignments to projects using criteria established by the City Council; and

WHEREAS, Section 18.156.120.F of the Morgan Hill Municipal Code further prescribes that the Planning Commission shall hold public hearing to consider the scoring recommendations and to make final determination of project scoring; and

WHEREAS, such requests were considered by the Planning Commission at its regular meetings of May 28, 2019 and June 11, 2019, at which time the Planning Commission recommended final scores for each application; and,

WHEREAS, testimony received at duly-noticed public hearings, along with exhibits and drawings and other materials have been considered in the review process;

NOW, THEREFORE, BE IT RESOLVED BY THE MORGAN HILL PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1: The final scores for each Residential Development Control System Project Application is hereby approved as contained in the attached Exhibits A.

SECTION 2: The distribution of residential building allotments shall be determined by the Planning Commission following City Council action with respect to any appeals of the Planning Commission's evaluation and any final modification of the project scores as contained in Exhibits A.

City of Morgan Hill
Resolution No. 19-08
Page 2 of 2

**PASSED AND ADOPTED THIS 11th DAY OF JUNE 2019, AT A REGULAR MEETING
OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:**

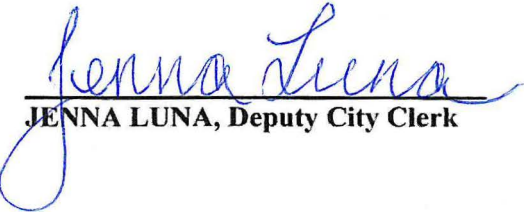
**AYES: COMMISSIONERS: DOWNEY, MUNOZ-MORRIS, HABIB,
MUELLER, TANDA, GONZALEZ-
ESCOTO, KUMAR**

NOES: COMMISSIONERS: NONE

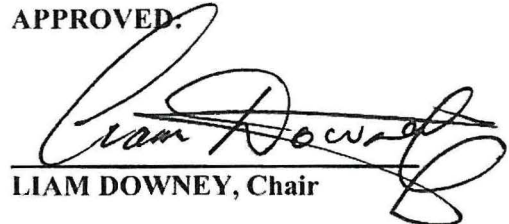
ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED.


LIAM DOWNEY, Chair

Attachment: PC Resolution No. 19-08 2018 RDCS- Final Scores (2445 : RDCS Appeal)

2018 Final Evaluations

EXHIBIT A- SUMMARY OF SCORES AND EVALUATION CRITERIA

APPLICATION NUMBER	COMPETITION MANUAL CRITERIA	SCHOOLS	LOCATION	AFFORDABLE	HOUSING DIVERSITY	PARKS AND OPEN SPACE	ENVIRONMENTAL PROTECTION	TRANSPORTATION	MUNICIPAL INFRASTRUCTURE	PROJECT QUALITY	GRAND TOTAL
	MAX SCORE	10	22	34	23	29	22	15	10	35	200
RDCS2019-0001 WATSONVILLE - BLACKROCK		9	13	0	23	29	22	15	10	34	155
RDCS2019-0002 LLAGAS-SABINI		0	14	30	22	28	22	12	7	28	163
RDCS2019-0003 TENNANT-OSITO HOLDINGS		10	22	34	20	26	22	14	7	30	185
RDCS2019-0004 MONTEREY - DOBKIN		10	22	26	16	29	22	11	6	31	173
RDCS2019-0005 MONTEREY - LUCKY SHING		8	9	26	16	29	22	15	9	35	169
RDCS2019-0006 HALF-BROOKFIELD		5	15	26	22	20	22	15	6	32	163
RDCS2019-0007 SPRING - GIANCOLA		7	22	18	22	29	22	13	10	34	177
RDCS2019-0008 DAKOTA- DUNNE		8	20	18	23	28	22	12	10	34	175



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT PRELIMINARY JUNE 2019 FINANCIAL AND INVESTMENT REPORT, CITY MANAGER SIGNATURE AUTHORITY REPORT, AND DIRECT THE CITY MANAGER TO TRANSFER THE FY2018-19 GENERAL FUND'S SURPLUS TO THE CITY'S PENSION AND OPEB TRUSTS

RECOMMENDATION(S)

1. Accept and file report; and
2. Direct the City Manager to transfer the FY2018-19 General Fund's surplus, pending completion of the year-end audit, to the City's Pension and OPEB Trusts.

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 preliminary fiscal year ending June 30, 2019 Financial and Investment Reports. The preliminary Revenue and Expense Summary for the fiscal year is included on the first page. Overall, revenue received for the year for all funds is approximately \$19.6 million or 13% lower than the budgeted amount mainly attributable to the timing of revenue expected to be received for Hale Avenue Extension and Inclusive Playground projects. However, revenue received for all funds is still approximately \$10.2 million or 8% higher than the prior fiscal year. Expenditures, including encumbrances, came in at 70% of the budget.

General Fund revenues totaled \$43.2 million, \$1.6 million or 4% higher than the prior fiscal year led by an increase in secured/unsecured property tax of approximately \$0.9 million. The increase in property tax was partially due to higher excess Educational Revenue Augmentation Fund (ERAF) distribution. General Fund expenditures, including encumbrances, came in at 96% of the budget or \$42.4 million. The preliminary FY2018-19 General Fund surplus or net excess of revenue over expenditures is approximately \$0.8 million, compared to projected deficit of approximately \$0.9 million at the mid-cycle budget. Staff is recommending the City Council to direct the City Manager to transfer the projected \$0.8 million General Fund surplus, pending completion of the year end financial audit, to the City's Pension and Other Post-Employment Benefits (OPEB) Trusts.

Development Services Fund revenues for the fiscal year totaled \$5.1 million, an increase of 14% from the prior fiscal year. Expenditures, including encumbrances, came in at \$5.9 million. Including encumbrances, the fund ended the fiscal year with an operating deficit of approximately \$0.7 million and a fund balance of approximately \$1.3 million.

Enterprise Fund revenues which comprised of Water and Sewer totaled \$37.8 million, \$2.8 million or 8% higher than a year ago primarily due to increased water sales and higher collection of development impact fees. Water Operations ended the fiscal year with an operating income of approximately \$1.4 million, allowing the fund to continue to replenish its reserve and fund ongoing capital improvements. Wastewater Operations ended the fiscal year with an operating income of approximately \$0.8 million, significantly better than prior year and will help fund much needed capital improvements. Per City Council reserve policy, these surpluses will be transferred to the capital projects funds once the operating and rate stabilization fund reserves have been met.

At the October 3, 2018 meeting, City Council directed staff to periodically report to the Council any contracts or agreements between \$25,000 to \$60,000 or the limit of the California Uniform Public Construction Cost Accounting Act (CUPCCAA) that were entered into by the City Manager. Staff drafted and presented a City Council Policy for consideration on November 7, 2018. The policy was approved and signed with the effective date of November 24, 2018. Staff has since developed a reporting mechanism that would report the requested information to the Council quarterly along with the financial and investment report. Page 17 of the attachment shows the contracts and or agreements between \$25,000 to \$60,000 or the limit of the CUPCCAA entered into by the City Manager since the last report on May 2, 2019 to August 21, 2019.

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. June 2019 Financial Statement Analysis
2. June 2019 Financial and Investment Report
3. Presentation - Preliminary FY18-19 Financial Report

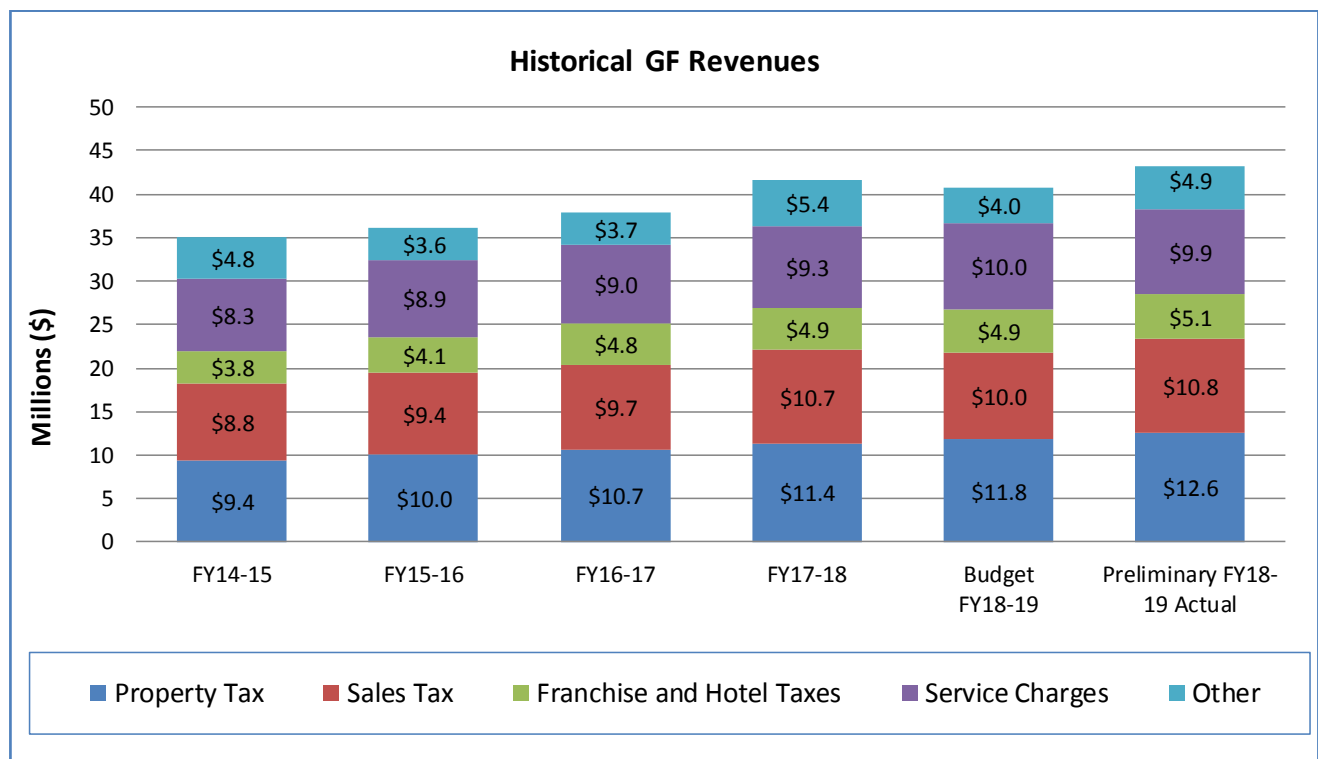


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED JUNE 2019 – 100% OF YEAR COMPLETE

- **General Fund** – The preliminary total revenues for the fiscal year exceeded the amended budget by approximately \$2.5 million. The biggest contributors for the increase came mostly from property tax and other agencies. Property tax, excluding property transfer tax, received for the fiscal year of approximately \$12.6 million, exceeded the amended budgeted amount by approximately \$0.7 million, within staff's revised projection. The increase is primarily due to new housing units, restoration of Prop 8 temporary reduction, and \$900,000 in excess Educational Revenue Augmentation Fund (ERAF) revenue. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Sales tax, including public safety sales tax received for the fiscal year is approximately \$10.8 million, slightly better than last fiscal year. Other agencies revenue received during the fiscal year includes \$675,000 reimbursement from the U.S. Department of Homeland Security for the Police Command Vehicle.

The small category of business licenses came in slightly over 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 Preliminary FY18-19 Actual.

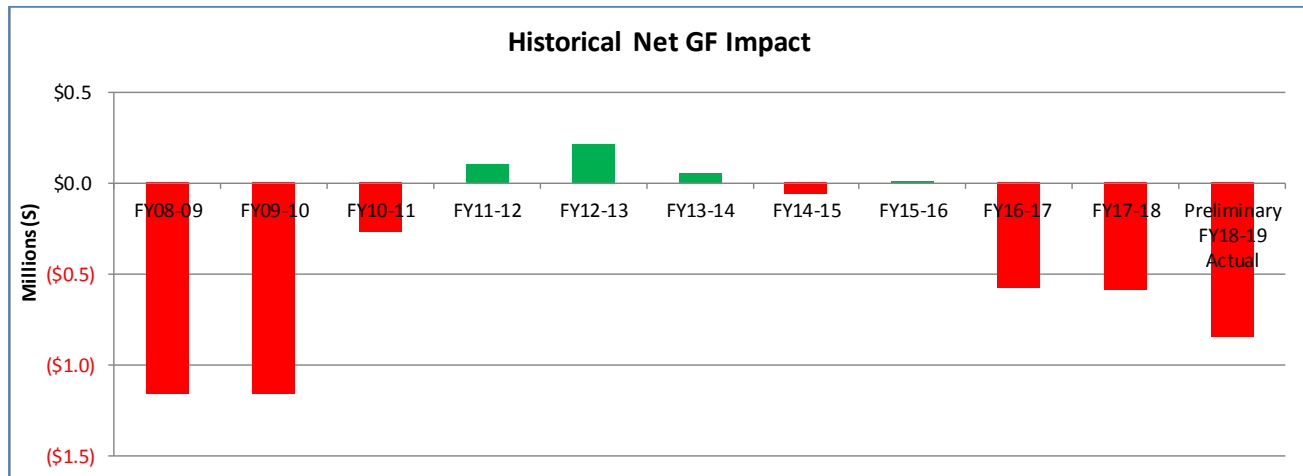


General Fund expenditures and encumbrances for the fiscal year totaled \$42.4 million, of which approximately \$1.0 million is attributable to outstanding encumbrances.

- **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 \$0.8 million for the fiscal year.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED JUNE 2019 – 100% OF YEAR COMPLETE



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** – Preliminary revenues for the fiscal year totaled \$5.1 million, an increase of 14% or approximately \$0.6 million from the prior fiscal year. Expenditures, including encumbrances, came in at \$5.9 million. Including encumbrances, the fund ended the fiscal year with an operating deficit of approximately \$0.8 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. The preliminary fiscal year end fund balance is approximately \$1.3 million. This amount should be able to support the fund's operating deficits in the next few years, however, General Fund support may be required in future years due to the aforementioned reasons.
- **Debt Service Funds** – Preliminary expenditures for the fiscal year totaled approximately \$686,000. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.
- **Wastewater Operations** – The preliminary revenue results of the Wastewater or Sewer Operations for the fiscal year totaled \$11.4 million. Expenditures and outstanding encumbrances totaled \$10.6 million or 93% of the budget. Per City Council reserve policy, any excess of revenue over expenditures will be



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2018-19
FOR THE MONTH ENDED JUNE 2019 – 100% OF YEAR COMPLETE

transferred to Wastewater capital projects fund once the operations and rate stabilization funds reserve levels have been met. The table below shows historical Sewer Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and Preliminary FY18-19 Actual.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	Preliminary FY18-19
Revenues	10.3	10.2	9.7	10.3	10.7	11.4
Expenditures	8.8	12.0	9.8	10.8	11.3	10.6
Operating Margin	1.5	(1.8)	(0.1)	(0.5)	(0.6)	0.8
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 for the fiscal year totaled \$14.2 million, approximately 9% more than a year ago mainly due to rate adjustments. Water Operations expenditures, including outstanding encumbrances, totaled approximately \$12.8 million for the year. Per City Council reserve policy, any excess of revenue over expenditures will be transferred to Water capital projects fund once the operations and rate stabilization funds reserve levels have been met. The table below shows Water Operations revenues and expenditures from FY14-15 through FY17-18 Actual, FY18-19 Budget, and Preliminary FY18-19 Actual.

(amount in millions)	FY14-15	FY15-16	FY16-17	FY17-18	Budget FY18-19	Preliminary FY18-19
Revenues	8.8	8.5	10.9	13.0	13.8	14.2
Expenditures	9.3	9.7	11.2	12.1	13.5	12.8
Operating Margin	(0.5)	(1.2)	(0.3)	0.9	0.3	1.4
Operating Margin without Encumbrances	(0.5)	(1.2)	(0.1)	1.4	0.3	2.3

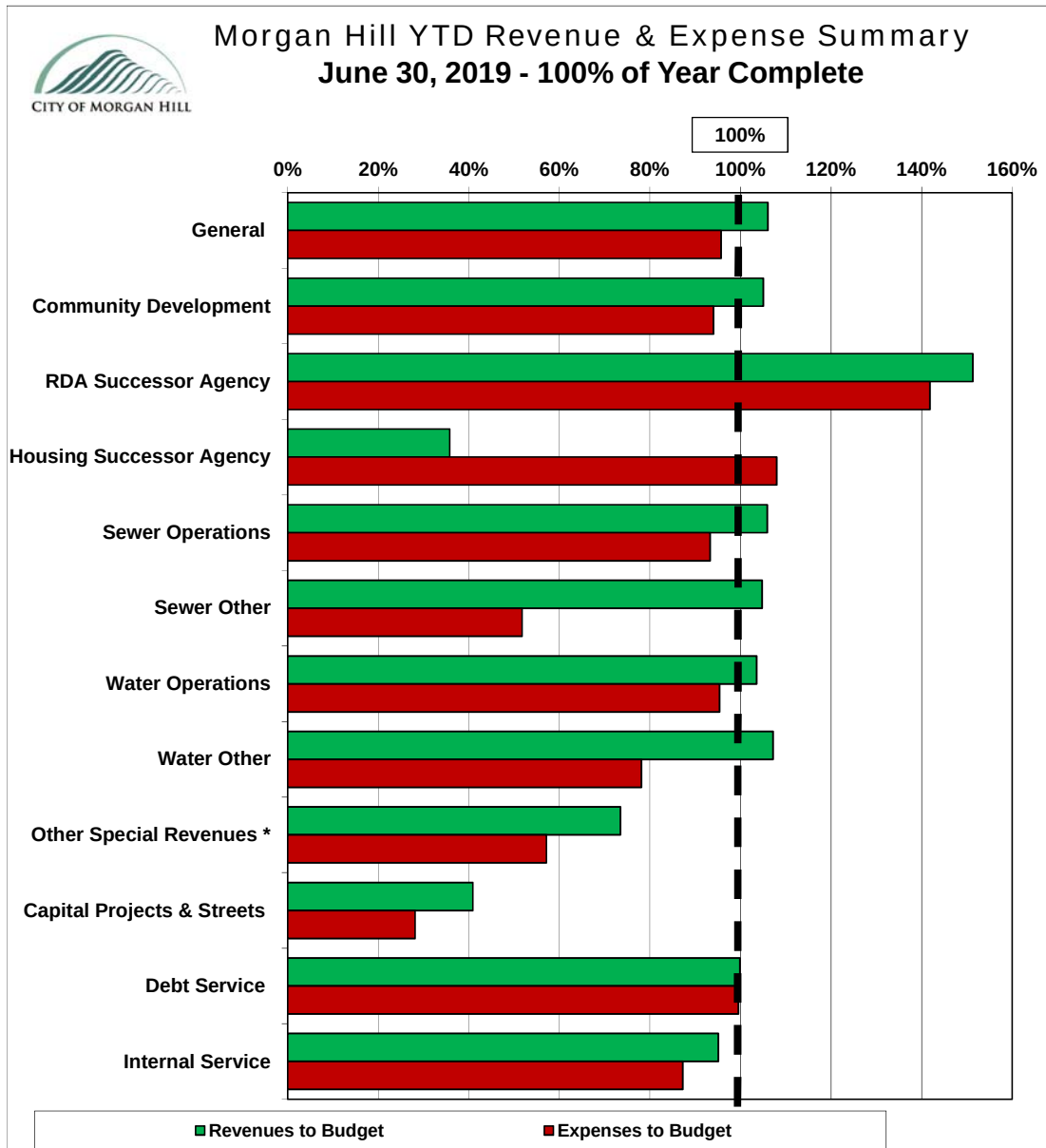
- **Investments** – One security was called during the month of June 2019. Total interest earnings received on investments were \$10,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
June 30, 2019 - 100% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



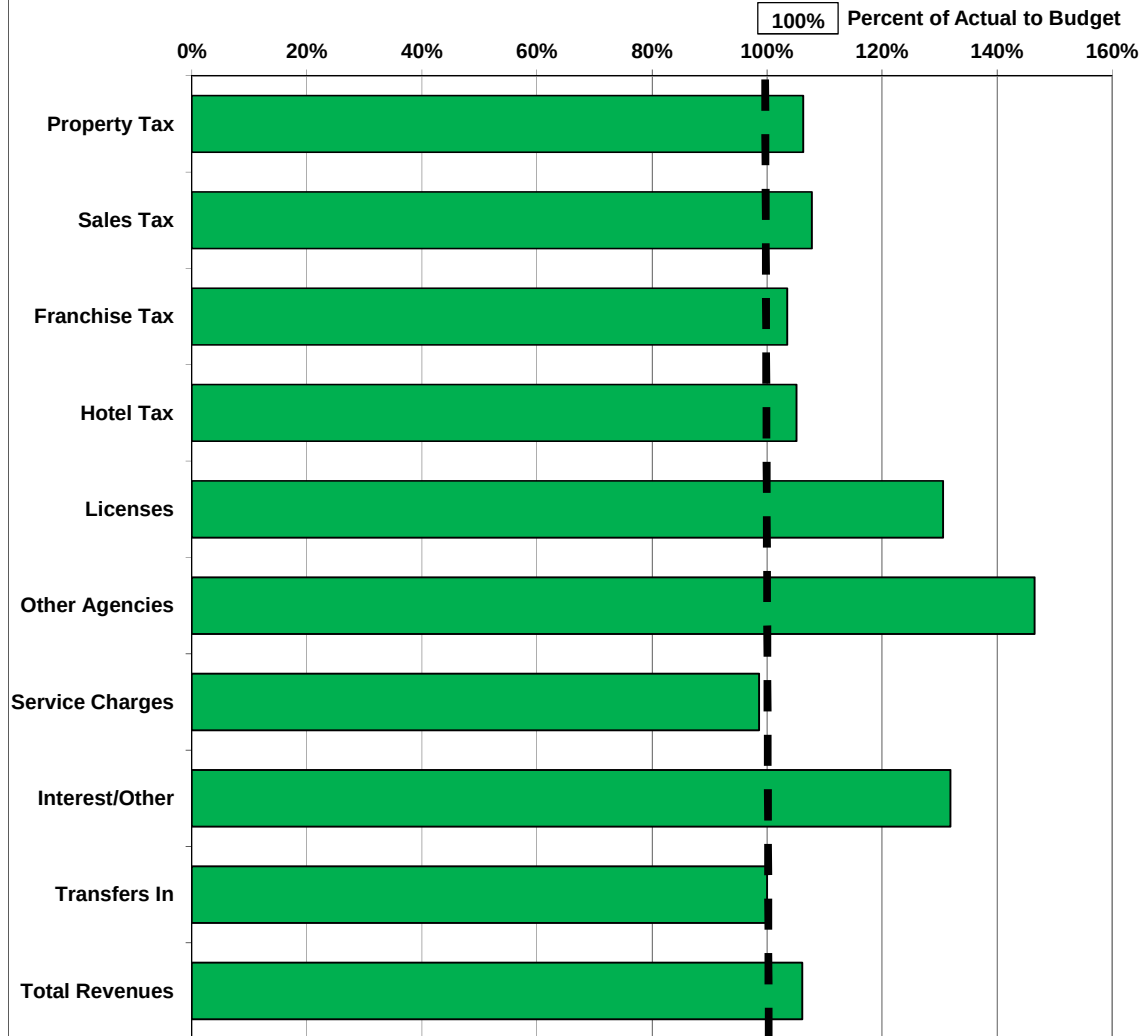
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 43,214,858	106%	\$ 42,429,598	96%
Community Development	5,125,211	105%	5,867,785	94%
RDA Successor Agency	12,025,330	151%	11,326,418	142%
Housing Successor Agency	854,971	36%	3,973,176	108%
Sewer Operations	11,381,125	106%	10,555,037	93%
Sewer Other	8,141,054	105%	8,000,336	52%
Water Operations	14,241,433	104%	12,837,564	95%
Water Other	4,039,216	107%	4,614,988	78%
Other Special Revenues *	3,030,065	74%	3,156,947	57%
Capital Projects & Streets	17,291,192	41%	17,024,973	28%
Debt Service	673,699	100%	685,986	100%
Internal Service	11,334,004	95%	10,110,321	87%
TOTAL FOR ALL FUNDS	\$ 131,352,157	87%	\$ 130,583,127	70%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.



Morgan Hill YTD General Fund Revenues

June 30, 2019 - 100% of Year Complete



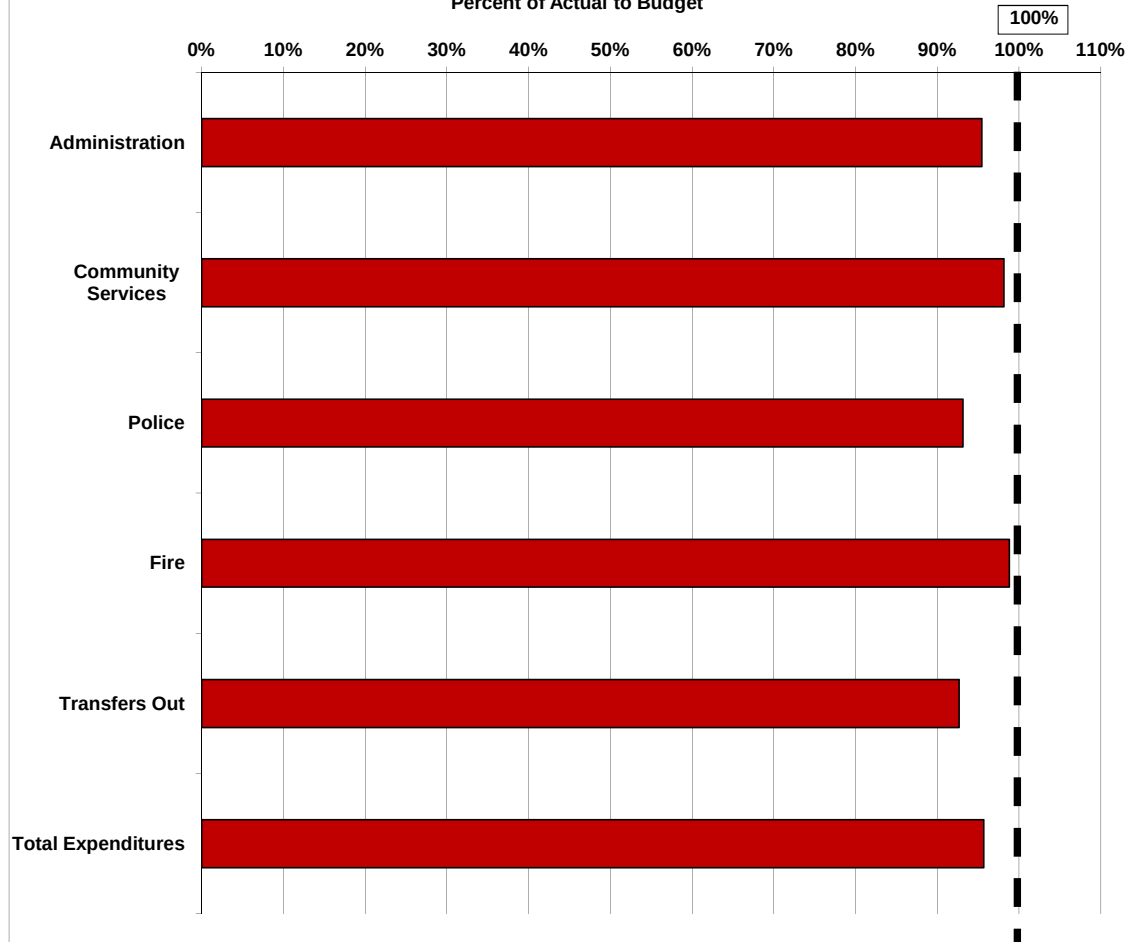
REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$11,813,532	\$12,556,401	106%	\$ 11,359,893	11%
Sales Tax	9,981,124	10,761,811	108%	10,687,414	1%
Franchise Tax	2,164,190	2,240,644	104%	2,186,272	2%
Hotel Tax	2,754,000	2,893,134	105%	2,732,631	6%
Licenses	200,800	262,288	131%	229,952	14%
Other Agencies	775,656	1,136,369	147%	654,254	74%
Service Charges	9,993,089	9,856,494	99%	9,325,440	6%
Interest/Other	1,406,042	1,854,152	132%	2,914,261	-36%
Transfers In	1,653,560	1,653,564	100%	1,557,052	6%
TOTAL REVENUES	\$40,741,993	\$43,214,858	106%	\$ 41,647,167	4%



Morgan Hill YTD General Fund Expenditures

June 30, 2019 - 100% 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	\$ 4,812,315	95%	\$ 6,595,806	-27%
Community Services	12,540,603	12,306,644	98%	10,564,622	16%
Police	17,636,042	16,423,407	93%	16,356,248	0%
Fire	6,999,059	6,916,195	99%	5,988,017	16%
Transfers Out	2,127,498	1,971,036	93%	1,911,906	3%
TOTAL EXPENDITURES	\$ 44,346,470	\$ 42,429,598	96%	\$ 41,416,599	2%

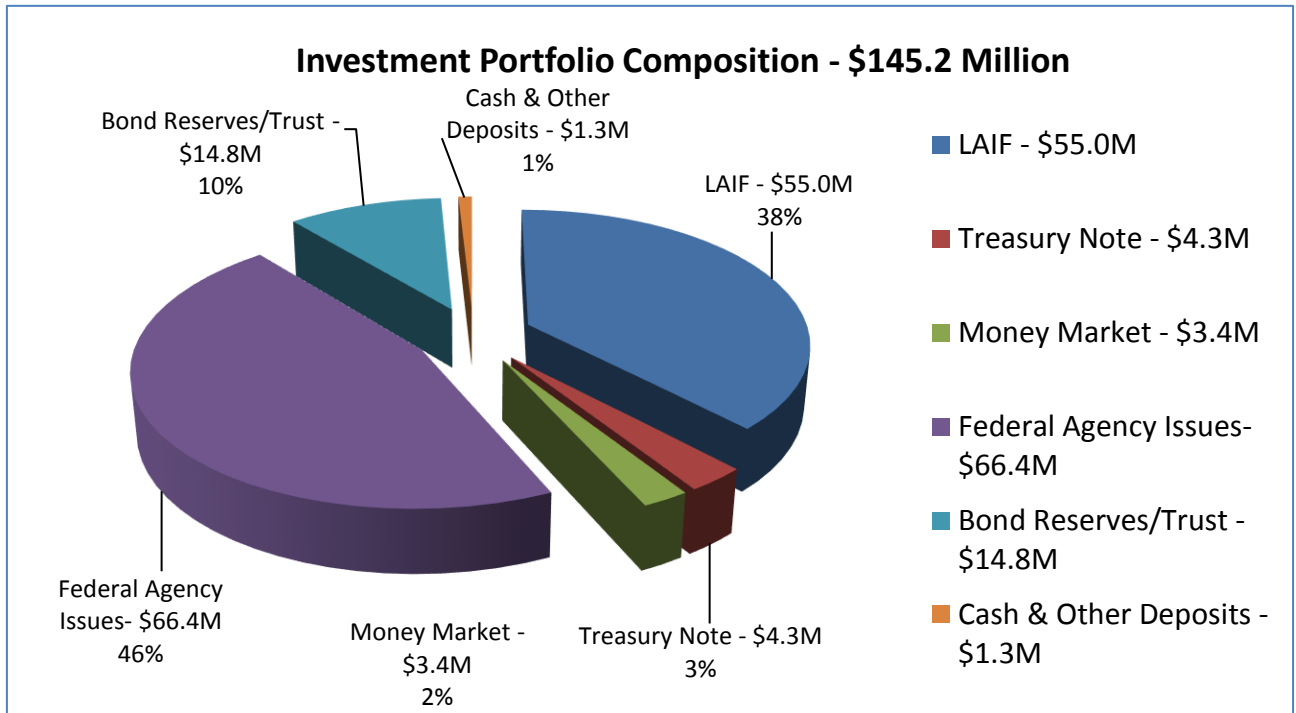


**City of Morgan Hill
Recreation Report - Fiscal Year 2018-19
For the Month and Twelve Months Ended June 30, 2019
100% of Year Complete**

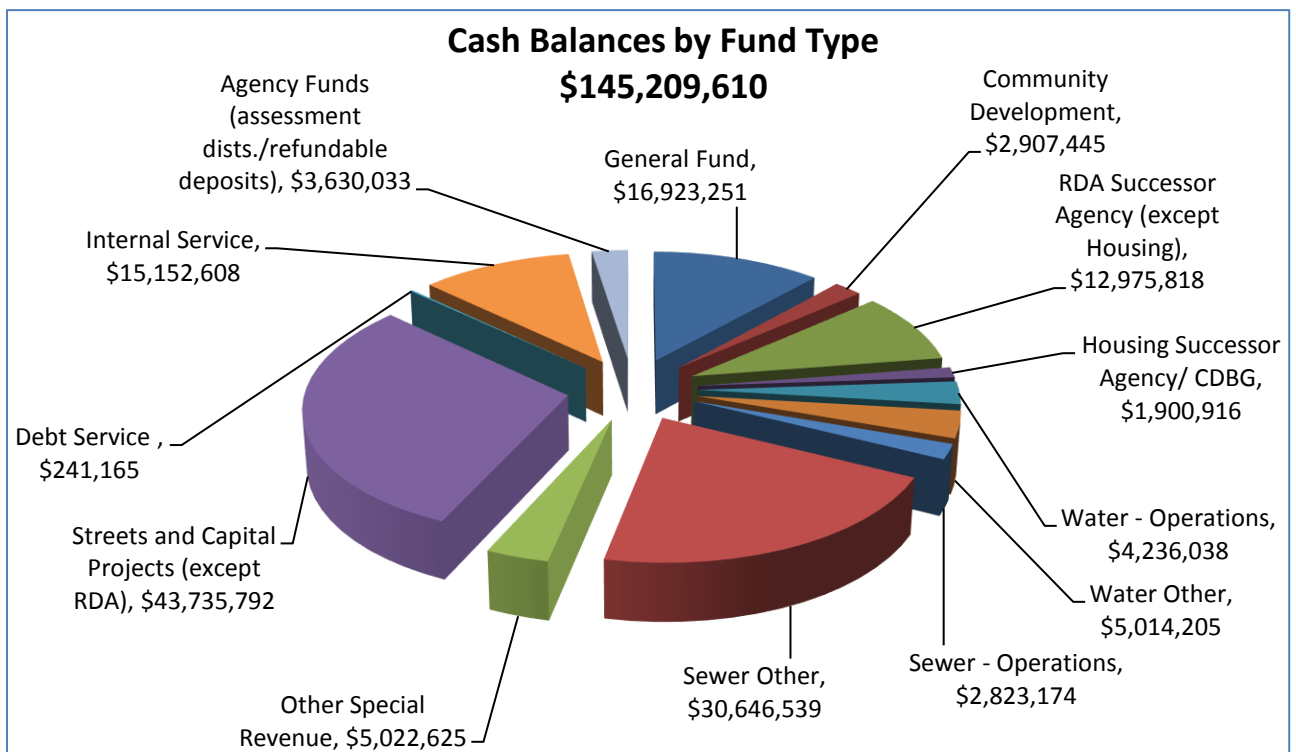
	<u>Budget</u>	<u>June 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,241,196	\$ 490,506	\$ 6,300,011	
Facility Rentals	898,700	32,365	921,429	
Community Services	147,840	15,959	107,072	
Transfers in	75,000	6,250	75,000	
Total Revenues	\$ 7,362,736	\$ 545,080	\$ 7,403,512	101%
Less: Expenditures				
Membership & Program Services	\$ 6,309,009	\$ 600,300	\$ 5,866,185	
Facility Rentals	1,355,732	129,978	1,341,429	
Community Services	653,307	56,438	586,175	
Total Expenditures	\$ 8,318,049	\$ 786,715	\$ 7,793,789	94%
Net Impact without encumbrances	\$ (955,313)	\$ (241,635)	\$ (390,277)	
Encumbrances	-	-	455,035	
Net Impact with encumbrances	\$ (955,313)	\$ (241,635)	\$ (845,312)	

City of Morgan Hill Monthly Investment Report - June 30, 2019

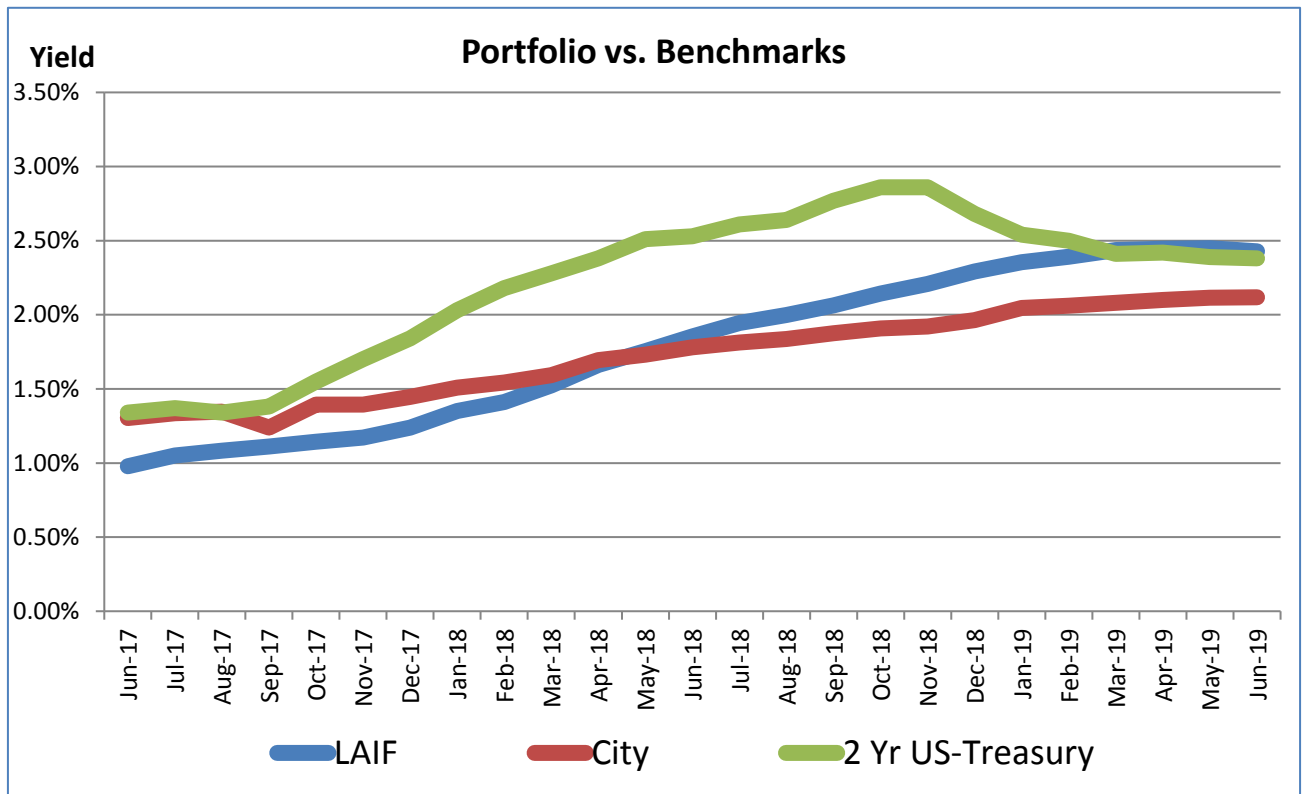
The following are the snapshots of City's investment portfolio as of June 30, 2019. The first chart shows the portfolio composition by investment type:



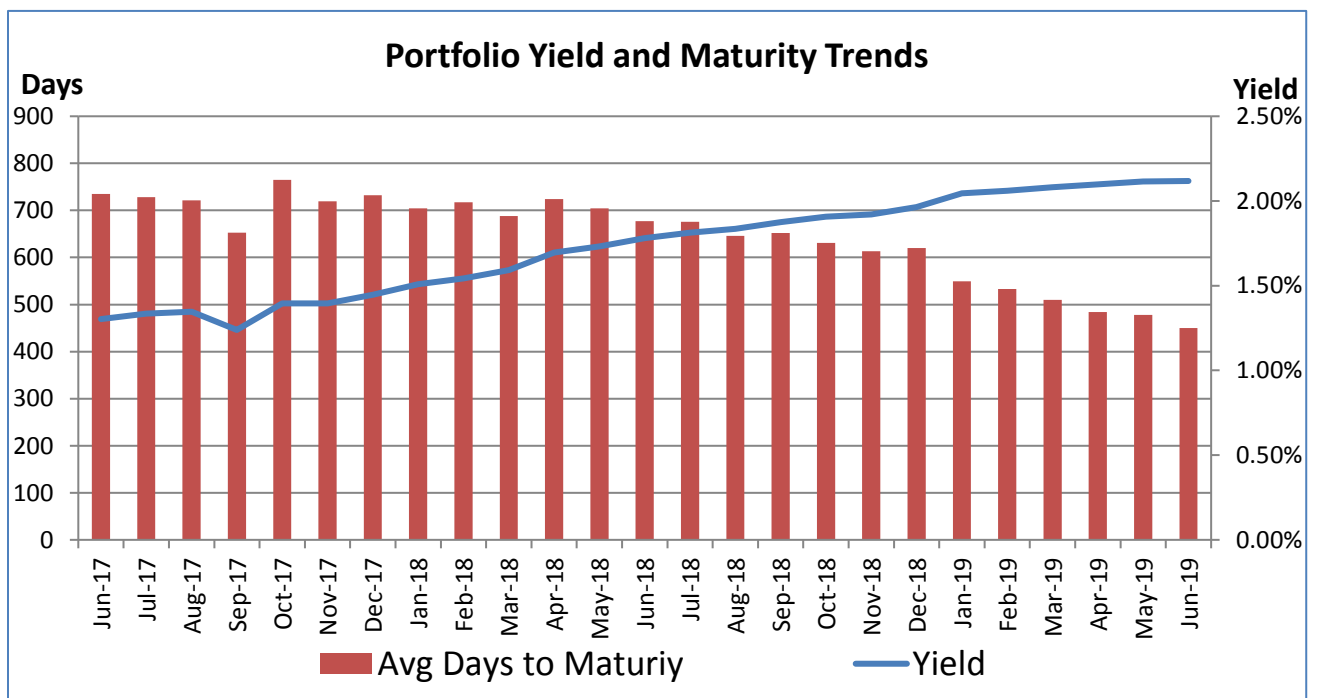
The chart below shows cash balances by fund type reconciled to City's financial system:



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 June 30, 2019**

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 54,981,905	37.86%	\$ 54,989,985	2.43%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.75%	3,988,960	1.70%	7/19/2019	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.75%	3,974,600	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.75%	3,964,400	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.38%	1,990,720	1.65%	9/29/2019	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.75%	3,982,640	1.60%	9/29/2019	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.75%	3,975,600	1.60%	7/27/2019	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.75%	3,978,560	1.55%	7/28/2019	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.38%	1,990,540	1.65%	7/28/2019	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.75%	3,957,160	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.07%	2,985,990	1.65%	11/23/2021	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.75%	3,979,640	1.63%	11/23/2021	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.75%	4,000,040	1.88%	11/26/2021	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.90%	1,300,936	2.15%	9/29/2019	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.65%	3,850,039	2.15%	10/19/2022	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	2.86%	4,150,540	2.20%	7/26/2019	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.07%	3,001,170	2.50%	7/30/2019	1/30/2023
Treasury Note	4/30/2018	4,306,915	2.97%	4,462,560	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,606,915	41.05%	\$ 59,534,094	1.82%		
Money Market		\$ 1,633,071	1.12%	\$ 1,633,071	2.22%		
Total City Managed/Average		\$ 116,221,891	80.04%	\$ 116,157,149	2.16%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	749,985	0.52%	749,370	1.18%	7/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,996	0.52%	748,913	1.25%	8/23/2019	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.52%	749,100	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	10/7/2016	749,977	0.52%	748,305	1.29%	9/12/2019	9/12/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,994	0.52%	748,298	1.25%	9/30/2019	9/30/2019
Fed Home Loan Mortgage	9/14/2018	824,085	0.57%	824,307	2.56%	8/1/2019	8/1/2019
Fed Home Loan Bank	9/26/2018	747,685	0.51%	752,175	2.80%	3/30/2020	3/30/2020
Fed Home Loan Bank	11/6/2018	744,527	0.51%	747,945	2.87%	11/15/2019	11/15/2019
Fed Home Loan Mortgage	1/18/2019	999,306	0.69%	1,004,380	2.59%	4/23/2020	4/23/2020
Fed Farm Credit Sys Disc	4/30/2019	889,386	0.61%	891,459	2.39%	12/31/2019	12/31/2019
Fed Home Loan Bank	5/9/2019	1,499,646	1.03%	1,500,435	2.64%	11/9/2021	11/9/2021
Fed Home Loan Bank	5/28/2019	1,694,013	1.17%	1,694,475	2.38%	8/23/2019	8/23/2019
Money Market		1,788,435	1.23%	1,788,435	2.22%		
Sub Total/Average		\$ 12,937,035	8.91%	\$ 12,947,596	2.14%		
Bond Reserve Accounts - Held By Trustees		\$ 12,583,106	8.67%	\$ 12,634,038			
Cash/Deposits		\$ 1,280,174	0.88%	\$ 1,280,174			
PARS Trust		\$ 2,187,404	1.51%	\$ 2,557,933			
GRAND TOTAL/AVERAGE		\$ 145,209,610	100.00%	\$ 145,576,892			

Attachment: June 2019 Financial and Investment Report (2444 : Accept Preliminary June 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JUNE 30, 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	2.43%	\$ 52,096,507	35.88%	\$ 52,104,163
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.43%	2,885,398	1.99%	2,885,822
Federal Issues	All Funds Pooled	1.62%	66,448,600	45.76%	66,230,695
US Treasury Notes	All Funds Pooled	2.73%	4,306,915	2.97%	4,462,560
Dreyfus Treas Cash Management Acct	All Funds Pooled	2.22%	3,421,507	2.36%	3,421,507
	SUBTOTAL		\$ 129,158,926	88.95%	\$ 129,104,746
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Lq Fund	Debt Service	2.01%	81	0.00%	81
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Lq Fund	Debt Service	2.01%	103	0.00%	103
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.22%	6,383,312	4.40%	6,383,312
US Treasury Notes - Reserve Acct.	Successor Fund	1.25%	5,074,237	3.49%	5,125,170
Zions Bank - MH Ranch 2015					
Blackrock Lq Funds Fed Fund -DI -2015	Agency Fund	2.01%	582,625	0.40%	582,625
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	2.01%	542,748	0.37%	542,748
	SUBTOTAL		12,583,106	8.67%	12,634,038
Other Cash/Deposits					
General Checking	All Funds		1,243,062	0.86%	1,243,062
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
PARS - OPEB Trust			1,387,404	0.96%	1,638,039
PARS - PENSION Trust			800,000	0.55%	919,894
	SUBTOTAL		3,467,578	2.39%	3,838,107
Total Cash and Investments			\$ 145,209,610	100.00%	\$ 145,576,892

CASH ACTIVITY SUMMARY
FY 2018-19

Fund Type	07/01/18 Balance	Change in Cash Balance	6/30/2019 Balance
General Fund	\$ 15,044,885	\$ 1,878,366	\$ 16,923,251
Community Development	3,419,872	(512,426)	2,907,445
RDA Successor Agency (except Housing)	12,277,198	698,619	12,975,818
Housing Successor Agency/ CDBG	4,150,303	(2,249,387)	1,900,916
Water - Operations	2,317,454	1,918,585	4,236,038
Water Other	4,954,819	59,385	5,014,205
Sewer - Operations	1,505,059	1,318,115	2,823,174
Sewer Other	29,212,866	1,433,672	30,646,539
Other Special Revenue	5,052,285	(29,660)	5,022,625
Streets and Capital Projects (except RDA)	42,155,711	1,580,081	43,735,792
Debt Service	253,454	(12,289)	241,165
Internal Service	12,991,987	2,160,621	15,152,608
Agency Funds (assessment dists./refundable deposits)	4,116,381	(486,348)	3,630,033
Total	\$ 137,452,276	\$ 7,757,334	\$ 145,209,610

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: Gina Nazareno, Senior Accountant

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 Twelve Months Ended June 30, 2019
100% 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	\$ 10,502,509	104%	\$ 9,619,977	\$ 882,532	9%
Property Tax - RPTTF Residual Distribution	1,405,500	1,405,500	1,718,831	122%	1,455,681	263,150	18%
Property Tax - Supplemental Roll	276,150	276,150	335,062	121%	284,235	50,827	18%
Sales Tax	9,601,124	9,601,124	10,392,495	108%	10,335,731	56,764	1%
Public Safety Sales Tax	380,000	380,000	369,317	97%	351,683	17,634	5%
Transient Occupancy Taxes	2,754,000	2,754,000	2,893,134	105%	2,732,631	160,503	6%
Franchise (Refuse, Cable, PG&E)	2,164,190	2,164,190	2,240,644	104%	2,186,272	54,373	2%
Property Transfer Tax	505,000	505,000	549,247	109%	559,788	(10,541)	-2%
TOTAL TAXES	27,217,846	27,217,846	29,001,238	107%	27,525,996	1,475,242	5%
LICENSES/PERMITS							
Business License	196,000	196,000	201,732	103%	225,163	(23,431)	-10%
Other Permits	4,800	4,800	60,556	1262%	4,789	55,767	1164%
TOTAL LICENSES/PERMITS	200,800	200,800	262,288	131%	229,952	32,336	14%
FINES AND PENALTIES							
Parking Enforcement	8,250	8,250	10,436	126%	12,005	(1,569)	-13%
Bails & Fines	71,500	71,500	102,694	144%	77,386	25,309	33%
Administrative Citations	9,500	9,500	59,304	624%	61,800	(2,496)	-4%
TOTAL FINES AND PENALTIES	89,250	89,250	172,434	193%	151,190	21,243	14%
OTHER AGENCIES							
Motor Vehicle in-Lieu	23,934	23,934	21,366	89%	23,237	(1,871)	-8%
Other Revenue - Other Agencies	271,398	775,656	1,136,369	147%	654,254	482,114	74%
TOTAL OTHER AGENCIES	295,332	799,590	1,157,735	145%	677,492	480,243	71%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,000	33,000	31,089	94%	47,196	(16,107)	-34%
Business License Application Review	36,000	36,000	44,152	123%	37,852	6,300	17%
Membership Services & Rec Programs	6,241,196	6,241,196	6,300,011	101%	5,989,130	310,880	5%
Facility Rentals	898,700	898,700	921,429	103%	905,383	16,046	2%
Community Services	147,840	147,840	107,072	72%	132,142	(25,070)	-19%
General Administration Overhead	1,709,712	1,709,712	1,706,112	100%	1,320,288	385,824	29%
Other Charges Current Services	926,641	926,641	746,629	81%	893,448	(146,819)	-16%
TOTAL CURRENT SERVICES	9,993,089	9,993,089	9,856,494	99%	9,325,440	531,055	6%
OTHER REVENUE							
Use of money/property	458,589	458,589	492,195	107%	369,762	122,433	33%
Other Revenues	254,014	329,269	618,910	188%	1,810,284	(1,191,374)	-66%
TOTAL OTHER REVENUE	712,603	787,858	1,111,105	141%	2,180,046	(1,068,941)	-49%
TRANSFERS IN							
Asset Seizure	-	15,840	15,840	0%	-	15,840	0%
Public Safety	100,000	100,000	100,000	100%	106,000	(6,000)	-6%
Streets	738,968	738,968	738,968	100%	657,000	81,968	12%
Police Impact	25,000	25,000	24,996	100%	24,996	-	n/a
Sewer Operations	349,376	349,376	349,380	100%	347,028	2,352	1%
Water Operations	349,376	349,376	349,380	100%	347,028	2,352	1%
Park Development	75,000	75,000	75,000	100%	75,000	-	n/a
TOTAL TRANSFERS IN	1,637,720	1,653,560	1,653,564	100%	1,557,052	96,512	6%
TOTAL GENERAL FUND	40,146,640	40,741,993	43,214,858	106%	41,647,167	1,567,690	4%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	751,089	751,089	787,320	105%	716,340	70,980	10%
Interest / Other Revenue/Other Charges	-	-	3,070	n/a	885	2,185	247%
202 STREET MAINTENANCE	751,089	751,089	790,390	105%	717,226	73,164	10%

Attachment: June 2019 Financial and Investment Report (2444 : Accept Preliminary June 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Twelve Months Ended June 30, 2019
100% 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	1,274	631%	248	1,026	413%
Police Grant/SLEF/JAG	100,000	100,000	148,747	149%	139,416	9,330	7%
205 PUBLIC SAFETY TRUST	100,202	100,202	150,021	150%	139,665	10,356	7%
206 COMMUNITY DEVELOPMENT							
Building Fees	2,996,450	2,996,450	2,499,426	83%	2,647,536	(148,110)	-6%
Planning Fees	1,396,529	1,396,529	2,047,049	147%	1,113,723	933,326	84%
Engineering Fees	462,524	462,524	518,639	112%	698,058	(179,419)	-26%
Other Revenue/Current Charges	24,265	24,265	60,096	248%	50,752	9,344	18%
206 COMMUNITY DEVELOPMENT	4,879,768	4,879,768	5,125,211	105%	4,510,069	615,141	14%
207 LONG RANGE PLANNING	741,894	741,894	684,982	92%	681,222	3,760	1%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	2,821	2,821	1,240	44%	197,801	(196,562)	-99%
215 and 216 HCD BLOCK GRANT	2,821	2,821	1,240	44%	197,801	(196,562)	-99%
225 ASSET SEIZURE	1,670	1,670	33,982	2035%	1,839	32,143	1748%
229 LIGHTING AND LANDSCAPE	188,591	188,591	183,364	97%	181,316	2,048	1%
230 COMMUNITY FACILITIES DISTRICT	44,198	44,198	55,010	124%	43,368	11,642	27%
232 ENVIRONMENTAL PROGRAMS	394,158	394,158	478,124	121%	452,749	25,374	6%
234 MOBILE HOME PARK RENT STAB.	661	661	9,474	1433%	3,034	6,440	212%
235 SENIOR HOUSING	3,347	3,347	4,231	126%	2,831	1,400	49%
236 HOUSING MITIGATION	1,613,912	2,613,912	1,405,279	54%	2,198,200	(792,921)	-36%
240 EMPLOYEE ASSISTANCE	28,949	28,949	21,841	75%	29,514	(7,673)	-26%
247 ENVIRONMENT REMEDIATION	2,118	2,118	2,518	119%	1,796	722	40%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,946,430	7,946,430	12,025,330	151%	8,945,909	3,079,422	34%
255 HOUSING SUCCESSOR AGENCY	2,386,006	2,386,006	854,971	36%	2,242,506	(1,387,535)	-62%
TOTAL SPECIAL REVENUE FUNDS	19,085,815	20,085,815	21,825,966	109%	20,349,043	1,476,923	7%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	7,959,013	8,032,013	2,135,635	27%	2,278,480	(142,846)	-6%
302 PARK MAINTENANCE	1,320,332	1,320,332	927,814	70%	1,361,566	(433,751)	-32%
303 LOCAL DRAINAGE	1,394,482	1,394,482	1,791,087	128%	2,017,458	(226,371)	-11%
304 LOCAL DRAINAGE/NON AB1600	80,981	80,981	155,156	192%	159,599	(4,443)	-3%
306 AGRICULTURE & OPEN SPACE PRESERVATION	2,652,538	2,652,538	2,304,741	87%	1,107,544	1,197,197	108%
308 STREET CIP	3,861,662	3,861,662	2,793,723	72%	2,688,414	105,309	4%
309 TRAFFIC IMPACT	17,251,157	19,501,157	2,982,157	15%	722,510	2,259,647	313%
311 POLICE IMPACT	277,713	277,713	290,020	104%	276,250	13,770	5%
313 FIRE IMPACT	349,306	349,306	371,352	106%	92,440	278,912	302%
346 PUBLIC FACILITIES NON-AB1600	590,499	590,499	135,832	23%	124,777	11,055	9%
347 PUBLIC FACILITIES IMPACT	198,932	340,412	222,527	65%	183,487	39,041	21%
348 LIBRARY	909,565	909,565	975,066	107%	762,745	212,321	28%
350 UNDERGROUNDING	45,800	45,800	154,767	338%	204,610	(49,843)	-24%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	684,678	749,778	137,609	18%	147,240	(9,631)	-7%
360 COMMUNITY/REC IMPACT FUND	1,275,010	1,415,260	1,123,316	79%	1,006,395	116,921	12%
TOTAL CAPITAL PROJECTS FUNDS	38,851,668	41,521,498	16,500,803	40%	13,133,514	3,367,289	26%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	298,856	298,856	299,084	100%	295,540	3,544	1%
441 POLICE FACILITY BOND	375,764	375,764	374,615	100%	381,479	(6,864)	-2%
TOTAL DEBT SERVICE FUNDS	674,620	674,620	673,699	100%	677,019	(3,320)	0%

Attachment: June 2019 Financial and Investment Report (2444 : Accept Preliminary June 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2018-19
For the Twelve Months Ended June 30, 2019
100% 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	10,505,784	101%	9,899,564	606,220	6%
Interest Income/Transfers	37,151	37,151	47,048	127%	28,363	18,685	66%
Other Revenue/Current Charges	318,700	318,700	828,293	260%	329,705	498,588	151%
640 SEWER OPERATION	10,746,851	10,746,851	11,381,125	106%	10,257,632	1,123,493	11%
641 SEWER EXPANSION							
Interest Income	215,856	215,856	341,420	158%	191,510	149,910	78%
Development Impact Fee	4,717,263	4,717,263	4,813,202	102%	3,956,935	856,267	22%
Transfers/Other	-	-	-	0%	-	-	0%
641 SEWER EXPANSION	4,933,119	4,933,119	5,154,622	104%	4,148,445	1,006,177	24%
642 SEWER RATE STABILIZATION	38,641	38,641	48,604	126%	33,705	14,899	44%
643 SEWER-CAPITAL PROJECT	2,797,976	2,797,976	2,937,828	105%	3,754,880	(817,053)	-22%
TOTAL SEWER FUNDS	18,516,587	18,516,587	19,522,178	105%	18,194,662	1,327,516	7%
650 WATER OPERATION							
Water Sales	12,435,000	12,435,000	12,688,232	102%	11,636,708	1,051,524	9%
Meter Install & Service	123,000	123,000	118,948	97%	239,934	(120,986)	-50%
Transfers-In / Interest Income	440,840	440,840	472,539	107%	443,895	28,644	6%
Other Revenue/Current Charges	752,660	752,660	961,714	128%	702,501	259,214	37%
650 WATER OPERATION	13,751,500	13,751,500	14,241,433	104%	13,023,038	1,218,395	9%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	47,561	47,561	54,187	114%	47,668	6,519	14%
Development Impact Fee	1,311,698	1,311,698	1,445,497	110%	1,050,635	394,862	38%
651 WATER EXPANSION	1,359,259	1,359,259	1,499,684	110%	1,098,303	401,381	37%
652 Water Rate Stabilization	8,223	8,223	10,397	126%	9,845	552	6%
653 Water Capital Project	2,400,895	2,400,895	2,529,135	105%	2,715,099	(185,965)	-7%
TOTAL WATER FUNDS	17,519,877	17,519,877	18,280,649	104%	16,846,285	1,434,364	9%
TOTAL ENTERPRISE FUNDS	36,036,464	36,036,464	37,802,827	105%	35,040,947	2,761,880	8%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,870,983	1,870,983	1,902,693	102%	1,607,533	295,159	18%
740 BUILDING MAINTENANCE	3,326,619	3,380,619	3,351,279	99%	3,103,276	248,004	8%
741 BUILDING REPLACEMENT	789,958	789,958	777,047	98%	499,157	277,890	56%
745 CIP ADMINISTRATION	1,780,750	1,780,750	1,456,860	82%	1,419,097	37,763	3%
760 UNEMPLOYMENT INSURANCE	2,324	2,324	2,825	122%	2,088	738	35%
770 WORKERS COMPENSATION	775,343	775,343	815,543	105%	1,024,834	(209,291)	-20%
790 EQUIPMENT REPLACEMENT	1,064,433	1,123,757	1,235,644	110%	1,123,505	112,139	10%
791 EMPLOYEE BENEFITS	1,171,099	1,171,099	760,954	65%	613,866	147,087	24%
793 CORPORATION YARD COMMISSION	-	-	3,638	0%	3,778	(140)	-4%
795 GENERAL LIABILITY INSURANCE	1,020,581	1,020,581	1,027,521	101%	952,145	75,376	8%
TOTAL INTERNAL SERVICE FUNDS	11,802,090	11,915,414	11,334,004	95%	10,349,279	984,725	10%
TOTAL FOR ALL FUNDS	\$ 146,597,297	\$ 150,975,804	\$ 131,352,157	87%	\$ 121,196,969	\$ 10,155,188	8%

Attachment: June 2019 Financial and Investment Report (2444 : Accept Preliminary June 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2018-19
For the Month and Twelve Months Ended June 30, 2019
100% 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	\$ 14,944	\$ 337,607	\$ 296,583	\$ 15,000	\$ 311,583	92%	\$ 321
	CITY ATTORNEY	68,215	768,318	634,256	113,451	747,707	97%	714
	CITY MANAGER	41,675	433,799	400,765	-	400,765	92%	2,441
	HUMAN RESOURCES	80,348	846,813	806,310	-	806,310	95%	701
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	64,696	614,068	579,332	1,331	580,662	95%	601
	Elections	2,161	322,533	147,349	150,000	297,349	92%	7
	COUNCIL SVCS & RECORDS MGMT	66,856	936,601	726,681	151,331	878,012	94%	671
	FINANCE	163,714	1,720,130	1,667,939	-	1,667,939	97%	1,621
	TOTAL ADMINISTRATION	435,752	5,043,269	4,532,534	279,781	4,812,315	95%	6,481
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	600,300	6,309,009	5,866,185	432,535	6,298,720	100%	5,691
	Recreation Facility Rentals	129,978	1,355,732	1,341,429	-	1,341,429	99%	1,291
	Community Services	56,438	653,307	586,175	22,500	608,675	93%	701
	Environmental Services	24,899	303,894	221,002	-	221,002	73%	191
	Street Maintenance	246,658	2,362,851	2,373,847	48,871	2,422,717	103%	2,111
	Downtown Maintenance	35,289	354,644	317,564	-	317,564	90%	281
	Cable Television	2,272	21,581	21,640	-	21,640	100%	21
	COMMUNITY SERVICES	1,095,834	11,361,018	10,727,841	503,905	11,231,746	99%	10,301
	CODE COMPLIANCE	15,889	150,464	152,033	-	152,033	101%	121
	CONGESTION MANAGEMENT	9,087	81,861	51,821	-	51,821	63%	61
	ECONOMIC DEVELOPMENT PROGRAMS	88,822	947,260	779,617	91,427	871,044	92%	21
	TOTAL COMMUNITY SERVICES	1,209,633	12,540,603	11,711,312	595,333	12,306,644	98%	10,521
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	117,433	1,222,942	1,323,760	-	1,323,760	108%	1,181
	Field Operations	947,004	9,375,273	8,839,390	7,353	8,846,743	94%	7,931
	Support Services	219,916	2,288,547	2,223,263	7,500	2,230,763	97%	2,081
	Emergency Services/Haz Mat	18,979	188,507	176,366	-	176,366	94%	221
	Special Operations	239,322	2,886,370	2,240,342	-	2,240,342	78%	2,451
	Dispatch Services	164,837	1,674,402	1,605,434	-	1,605,434	96%	1,641
	POLICE	1,707,492	17,636,042	16,408,555	14,853	16,423,407	93%	15,511
	FIRE	615,299	6,999,059	6,842,278	73,917	6,916,195	99%	5,951
	TOTAL PUBLIC SAFETY	2,322,791	24,635,101	23,250,833	88,770	23,339,602	95%	21,471
IV. TRANSFERS								
	Other	201,753	2,127,498	1,971,036	-	1,971,036	93%	1,911
	TOTAL TRANSFERS	201,753	2,127,498	1,971,036	-	1,971,036	93%	1,911
	TOTAL GENERAL FUND	4,169,929	44,346,470	41,465,714	963,883	42,429,598	96%	40,391

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City of Morgan Hill
Year to Date Expenses - Fiscal Year 2018-19
For the Month and Twelve Months Ended June 30, 2019
100% 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	224,055	742,877	742,880	-	742,880	100%	65%
205	PUBLIC SAFETY/SUPP.LAW	545	106,536	106,540	-	106,540	100%	100%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	438,872	2,597,350	2,467,873	45,645	2,513,519	97%	2,03%
	Building	207,337	1,976,108	1,871,477	2,895	1,874,372	95%	1,78%
	Engineering	156,705	1,668,062	1,394,626	85,268	1,479,894	89%	1,41%
206	COMMUNITY DEVELOPMENT FUND	802,914	6,241,520	5,733,977	133,808	5,867,785	94%	5,24%
207	LONG RANGE PLANNING	38,761	1,383,881	596,618	174,149	770,767	56%	66%
215/216	CDBG	413	4,961	5,292	-	5,292	107%	20%
225	ASSET SEIZURE	15,840	15,840	15,840	-	15,840	100%	
229	LIGHTING AND LANDSCAPE	31,084	195,274	182,421	3,079	185,500	95%	18%
230	COMMUNITY FACILITIES DISTRICT	4,441	46,262	24,669	-	24,669	53%	2%
232	ENVIRONMENT PROGRAMS	46,748	406,727	399,686	16,605	416,291	102%	37%
234	MOBILE HOME PARK	34	405	408	-	408	101%	
236	HOUSING MITIGATION	99,107	3,323,394	1,594,892	23,100	1,617,992	49%	1,67%
240	EMPLOYEE ASSISTANCE	1,969	28,430	8,385	-	8,385	29%	2%
247	ENVIRONMENTAL REMEDIATION	1,093	-	5,263	-	5,263	0%	
250	COMH-SUCCESSOR AGENCY-MHRDA	11,668	7,983,635	11,326,418	-	11,326,418	142%	8,81%
255	HOUSING SUCCESSOR AGENCY	121,807	3,679,973	3,967,278	5,898	3,973,176	108%	2,85%
TOTAL SPECIAL REVENUE FUNDS		1,400,478	24,159,715	24,710,567	356,639	25,067,205	104%	20,83%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	193,407	8,952,955	809,459	658,232	1,467,691	16%	4,34%
302	PARK MAINTENANCE	129,194	1,248,941	1,104,473	141,493	1,245,966	100%	2,54%
303	LOCAL DRAINAGE	231	2,773,416	2,350,921	7,912	2,358,832	85%	1%
304	LOCAL DRAIN. NON-AB1600	4,329	338,627	4,848	-	4,848	1%	5%
306	AGRICULTURE & OPEN SPACE PRESERVATION	(1,830,198)	8,483,054	1,379,779	57,959	1,437,738	17%	12%
308	STREET CIP	21,148	5,392,576	1,884,657	188,090	2,072,748	38%	2,17%
309	TRAFFIC IMPACT	129,221	22,743,433	5,278,051	170,856	5,448,907	24%	1,99%
311	POLICE IMPACT	2,534	228,096	228,179	-	228,179	100%	23%
313	FIRE IMPACT	96,888	172,227	160,864	9,462	170,326	99%	
346	PUBLIC FAC.NON AB1600	43,379	1,041,119	479,903	30,081	509,984	49%	57%
347	PUBLIC FACILITIES IMPACT	49,809	207,439	57,192	91,987	149,179	72%	
348	LIBRARY IMPACT	46,751	3,849,962	610,142	44,565	654,707	17%	50%
350	UNDERGROUNDING	85	56,024	1,020	-	1,020	2%	
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	37,650	1,830,740	159,412	131,091	290,503	16%	28%
360	COMM/REC CENTER IMPACT	30,449	2,419,177	113,446	128,021	241,468	0%	16%
TOTAL CAPITAL PROJECTS FUNDS		(1,045,123)	59,737,787	14,622,344	1,659,750	16,282,093	27%	13,04%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	799	308,656	299,567	-	299,567	97%	28%
441	POLICE FACILITY BOND DEBT	305	380,313	386,419	-	386,419	102%	39%
TOTAL DEBT SERVICE FUNDS		1,104	688,969	685,986	-	685,986	100%	67%

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City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2018-19
 For the Month and Twelve Months Ended June 30, 2019
 100% 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	891,712	11,311,787	10,120,613	434,425	10,555,037	93%	10,621
641	SEWER CAPITAL EXPANSION	1,115,769	4,406,573	2,670,325	378,839	3,049,163	69%	2,031
642	SEWER RATE STABILIZATION	86	1,027	1,032	-	1,032	100%	-
643	SEWER-CAPITAL PROJECTS	39,692	11,033,664	4,389,160	560,981	4,950,141	45%	3,481
TOTAL SEWER FUND(S)		2,047,259	26,753,051	17,181,129	1,374,244	18,555,374	69%	16,151
WATER								
	Water Operations	1,681,138	12,440,123	11,061,234	832,375	11,893,609	96%	10,801
	Utility Billing	81,194	809,160	790,739	16,040	806,779	100%	751
	Water Conservation	7,273	210,082	89,176	48,000	137,176	65%	101
650	WATER OPERATIONS	1,769,605	13,459,365	11,941,150	896,414	12,837,564	95%	11,661
651	WATER CAPITAL EXPANSION	215,382	3,374,572	2,046,980	559,010	2,605,990	77%	1,561
652	WATER RATE STABILIZATION	28	335	336	-	336	100%	-
653	WATER-CAPITAL PROJECTS	9,585	2,535,148	1,934,861	73,800	2,008,661	79%	2,741
TOTAL WATER FUND(S)		1,994,600	19,369,421	15,923,327	1,529,224	17,452,552	90%	15,961
TOTAL ENTERPRISE FUNDS		4,041,859	46,122,472	33,104,457	2,903,469	36,007,925	78%	32,112
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	144,914	2,013,703	1,539,022	110,758	1,649,780	82%	1,681
740	BUILDING MAINTENANCE	426,213	3,430,986	3,235,164	12,868	3,248,031	95%	3,161
741	BUILDING REPLACEMENT	112,103	429,806	346,269	8,950	355,219	83%	481
745	CIP ADMINISTRATION	150,432	1,813,012	1,491,456	10,131	1,501,587	83%	1,411
760	UNEMPLOYMENT	-	10,000	12,873	-	12,873	129%	-
770	WORKERS COMPENSATION	14,423	947,795	564,746	-	564,746	60%	911
790	EQUIPMENT REPLACEMENT	109,586	1,332,012	842,514	374,915	1,217,429	91%	801
791	EMPLOYEE BENEFITS FUND	17,828	600,000	586,104	-	586,104	98%	651
793	CORP YARD COMMISSION	-	1,903	1,220	-	1,220	0%	-
795	GEN. LIABILITY INSURANCE	13,749	1,010,346	973,332	-	973,332	96%	841
TOTAL INTERNAL SERVICE FUNDS		989,249	11,589,562	9,592,699	517,621	10,110,321	87%	9,991
REPORT TOTAL		\$ 9,557,494	\$ 186,644,974	\$ 124,181,766	\$ 6,401,361	\$ 130,583,127	70%	\$ 117,071

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 City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Twelve Months Ended June 30, 2019 100% 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	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 17,604,727	106%	\$ 43,214,858	106%	\$ 41,465,714	94%	\$ 1,749,143	\$ 963,883	\$ 18,389,987
	TOTAL GENERAL FUND	\$ 17,604,727	106%	\$ 43,214,858	106%	\$ 41,465,714	94%	\$ 1,749,143	\$ 963,883	\$ 18,389,987
202	STREET MAINTENANCE	58,830	105%	790,390	105%	742,880	95%	47,510	-	106,340
205	PUBLIC SAFETY/SUPPL. LAW	50,422	150%	150,021	150%	106,540	84%	43,481	-	93,903
206	COMMUNITY DEVELOPMENT	2,001,953	105%	5,125,211	105%	5,733,977	92%	(608,766)	133,808	1,259,379
207	LONG RANGE PLANNING	1,160,548	92%	684,982	92%	596,618	43%	88,365	174,149	1,074,764
215 / 216	CDBG	59,981	1,240	44%	5,292	0%	(4,052)	-	-	55,929
225	ASSET SEIZURE	111,921	33,982	2035%	-	-	0%	33,982	-	145,903
229	LIGHTING AND LANDSCAPE	157,826	183,364	97%	182,421	93%	944	3,079	-	155,691
230	COMMUNITY FACILITIES DISTRICT	82,203	55,010	124%	24,669	0%	30,341	-	-	112,544
232	ENVIRONMENTAL PROGRAMS	243,732	478,124	121%	399,686	98%	78,438	16,605	-	305,565
234	MOBILE HOME PK RENT STAB.	43,345	9,474	1433%	408	101%	9,066	-	-	52,411
235	SENIOR HOUSING	224,078	4,231	126%	-	0%	4,231	-	-	228,309
236	HOUSING MITIGATION	2,714,194	1,405,279	54%	1,594,892	48%	(189,613)	23,100	-	2,501,481
240	EMPLOYEE ASSISTANCE	38,932	21,841	75%	8,385	29%	13,456	-	-	52,388
247	ENVIRONMENT REMEDIATION	135,819	2,518	119%	5,263	0%	(2,746)	-	-	133,074
250	COMH-SUCCESSOR AGENCY-MHRDA	(877,559)	12,025,330	151%	11,326,418	142%	698,912	11,457,549	-	(11,636,196)
255	HOUSING SUCCESSOR AGENCY	4,072,877	854,971	36%	3,967,278	108%	(3,112,307)	5,898	-	954,672
260	PUBLIC ART	111	-	n/a	-	-	-	-	-	111
	TOTAL SPECIAL REVENUE FUNDS	\$ 10,279,213	109%	\$ 21,825,966	109%	\$ 24,694,727	102%	\$ (2,868,760)	\$ 11,814,188	\$ (4,403,735)
301	PARK DEV. IMPACT FUND	2,787,306	2,135,635	27%	809,459	9%	1,326,176	658,232	-	3,455,250
302	PARK MAINTENANCE	4,265,806	927,814	70%	1,104,473	88%	(176,659)	141,493	-	3,947,655
303	LOCAL DRAINAGE	10,405,902	1,791,087	128%	2,350,921	85%	(559,833)	7,912	-	9,838,157
304	LOCAL DRAINAGE/NON-AB1600	1,409,474	155,156	192%	4,848	1%	150,308	-	-	1,559,782
306	AGRICULTURE AND OPEN SPACE PRESERV	7,017,877	2,304,741	87%	1,379,779	16%	924,962	57,959	-	7,884,880
308	STREET CIP	2,333,919	2,793,723	72%	1,884,657	35%	909,066	188,090	-	3,054,894
309	TRAFFIC IMPACT FUND	3,437,980	2,982,157	15%	5,278,051	23%	(2,295,893)	170,856	-	971,231
311	POLICE IMPACT FUND	(736,934)	290,020	104%	228,179	100%	61,841	-	-	(675,093)
313	FIRE IMPACT FUND	3,906,952	371,352	106%	160,864	93%	210,488	9,462	-	4,107,978
346	PUBLIC FACILITIES NON-AB1600	166,110	135,832	23%	479,903	46%	(344,071)	91,987	-	(269,948)
347	PUBLIC FACILITIES IMPACT FUND	520,300	222,527	65%	57,192	28%	165,335	44,565	-	641,070
348	LIBRARY IMPACT FUND	2,371,544	975,066	107%	610,142	16%	364,924	-	-	2,736,468
350	UNDERGROUNDING	707,205	154,767	338%	1,020	2%	153,747	131,091	-	729,861
355	SCHOOL PEDESTRIAN/TRAFFIC SFY	1,502,442	137,609	18%	159,412	9%	(21,803)	128,021	-	1,352,618
360	COMM/REC CTR IMPACT FUND	1,113,663	1,123,316	79%	113,446	0%	1,009,870	-	-	2,123,533
	TOTAL CAPITAL PROJECT FUNDS	\$ 41,209,546	\$ 16,500,803	40%	\$ 14,622,344	24%	\$ 1,878,459	\$ 1,629,669	\$ 41,458,336	
420	CIVIC CENTER DEBT	171,658	299,084	100%	299,567	97%	(483)	81	-	171,094
441	POLICE FACILITY BOND DEBT	82,263	374,615	100%	386,419	102%	(11,804)	103	-	70,357
	TOTAL DEBT SERVICE FUNDS	\$ 253,921	\$ 673,699	100%	\$ 685,986	100%	\$ (12,286)	\$ 184	\$ 241,451	

Fund No.	Fund	City of Morgan Hill Fund Activity Summary - Fiscal Year 2018-19 For the Twelve Months Ended June 30, 2019 100% of Year Complete										
		Fund Balance 06-30-18	Revenues		Expenses				Year to-Date Deficit or Carryover		Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget	YTD Actual	% of Budget	YTD Actual	% of Budget	Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,901,439	106%	\$ 11,381,125	106%	\$ 10,120,613	89%	\$ 1,260,512	89%	\$ 434,425	89%	3,727,526	
641	SEWER IMPACT FUND*	15,556,702	104%	5,154,622	104%	2,670,325	61%	2,484,298	61%	2,484,298	61%	378,839	17,662,161
642	SEWER RATE STABILIZATION	2,574,831	126%	48,604	126%	1,032	100%	47,572	100%	-	-	-	2,622,403
643	SEWER-CAPITAL PROJECTS	9,316,726	105%	2,937,828	105%	4,389,160	40%	(1,451,333)	40%	(1,451,333)	40%	560,981	7,304,413
650	WATER OPERATIONS	3,409,384	104%	14,241,433	104%	11,941,150	89%	2,300,283	89%	2,300,283	89%	896,414	4,813,253
651	WATER IMPACT FUND*	2,680,718	110%	1,499,684	110%	2,046,980	61%	(547,296)	61%	(547,296)	61%	559,010	1,574,412
652	WATER RATE STABILIZATION	514,170	126%	10,397	126%	336	100%	10,061	100%	-	-	-	524,231
653	WATER -CAPITAL PROJECT	564,089	105%	2,529,135	105%	1,934,861	76%	594,273	76%	594,273	76%	73,800	1,084,563
TOTAL ENTERPRISE FUNDS		\$ 37,518,059	105%	\$ 37,802,827	105%	\$ 33,104,457	72%	\$ 4,698,371	72%	\$ 2,903,469	72%	\$ 39,312,961	

730	INFORMATION SERVICES	\$ 591,635	102%	\$ 1,902,693	102%	\$ 1,539,022	76%	\$ 363,670	76%	\$ 110,758	76%	\$ 844,548	
740	BUILDING MAINTENANCE	(4,788)	99%	3,351,279	99%	3,235,164	94%	116,115	94%	12,868	94%	98,460	
741	BUILDING REPLACEMENT	2,081,486	98%	777,047	98%	346,269	81%	430,778	81%	8,950	81%	2,503,314	
745	CIP ENGINEERING	62,962	82%	1,456,860	82%	1,491,456	82%	(34,596)	82%	10,131	82%	18,235	
760	UNEMPLOYMENT	152,405	122%	2,825	122%	12,873	129%	(10,048)	129%	-	-	142,357	
770	WORKERS COMPENSATION	1,763,179	105%	815,543	105%	564,746	60%	250,797	60%	30,000	60%	1,983,976	
790	EQUIPMENT REPLACEMENT	4,432,003	110%	1,235,644	110%	842,514	63%	393,131	63%	374,915	63%	4,450,219	
791	EMPLOYEE BENEFITS FUNDS	(364,078)	65%	760,954	65%	586,104	98%	174,849	98%	-	-	(189,229)	
793	CORP YARD COMMISSION	-	0%	3,638	0%	1,220	0%	2,418	0%	-	-	2,418	
795	GEN. LIABILITY INSURANCE	1,341,056	101%	1,027,521	101%	973,332	96%	54,189	96%	-	-	1,395,245	
TOTAL INTERNAL SERVICE FUNDS		\$ 10,055,860	95%	\$ 11,334,004	95%	\$ 9,592,699	83%	\$ 1,741,304	83%	\$ 547,621	83%	\$ 11,249,543	

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,604,727	\$ 43,214,858	106%	\$ 41,465,714	94%	\$ 1,749,143	\$ 963,883	\$ 18,389,987
SPECIAL REVENUE GROUP	10,279,213	21,825,966	109%	24,694,727	102%	(2,868,760)	11,814,188	(4,403,735)
DEBT SERVICE GROUP	253,921	673,699	100%	685,986	100%	(12,286)	184	241,451
CAPITAL PROJECTS GROUP	41,209,546	16,500,803	40%	14,622,344	24%	1,878,459	1,629,669	41,458,336
ENTERPRISE GROUP	37,518,059	37,802,827	105%	33,104,457	72%	4,698,371	2,903,469	39,312,961
INTERNAL SERVICE GROUP	10,055,860	11,334,004	95%	9,592,699	83%	1,741,304	547,621	11,249,543
TOTAL ALL GROUPS	\$ 116,921,326	\$ 131,352,157	87%	\$ 124,165,926	67%	\$ 7,186,231	\$ 17,859,013	\$ 106,248,543

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 Manager's Signature Authority

Contracts and Agreements Between \$25,000 to \$60,000 Entered Since 5/2/19 to 8/21/19

Vendor Name	Description of Service	Begin Date	End Date	Department	Amount
Flexground Surfaces, Inc	Aquatics Center Kooflex Project	4/25/2019	5/22/2019	CSD	\$59,972
Tucker Construction, Inc	Dunne Hill Fire Station Repairs	4/30/2019	7/22/2019	CSD	\$25,699
Management Partners	Feasibility/viability analysis services-Villa Mira Monte	5/17/2019	3/31/2020	E&U	\$40,000
Public Safety Innovation	Command Vehicle Maintenance Service Agreement	7/2/2019	6/30/2021	PD	\$50,000
Gilroy Compassion Center	Focus Safe Park Case Management Services	7/2/2019	6/30/2020	DS	\$25,591
ENGEO Incorporated	Compaction Testing and Special inspection for CIP projects	7/2/2019	6/30/2020	E&U	\$59,000
Greensport Association	Sports Officiating	7/2/2019	6/30/2020	CSD	\$30,000
DRYCO Construction, Inc	2019 Seal Coat Project	7/5/2019	9/13/2019	E&U	\$49,058
National Recreation and Park Association	MOU- Galvan Park Par Course Grant	7/5/2019	12/31/2019	CSD	\$30,000
Ross Recreation Equipment Company Inc	Library Park Shade Structure	7/16/2019	10/31/2019	CSD	\$38,677
Jarvis, Fay & Gibson, LLP	CEQA review and advise for MH Technology Center Project	7/12/2019	6/30/2020	CAO	\$30,000
Law Offices of Gary A. Baum	General Municipal Law Advice	7/24/2019	6/30/2020	CAO	\$30,000
Shade Structures, Inc dba USA Shade & Fabric Structures	OSC Shade Structure Project	7/19/2019	10/31/2019	CSD	\$28,896
Burke, Williams & Sorensen, LLP	Legal assistance related to Affordable Housing Documents	8/5/2019	6/30/2020	CAO	\$45,000
Jarvis, Fay & Gibson, LLP	General Legal advice and public contract matters	8/5/2019	8/5/2019	CAO	\$25,000
David J. Powers & Associates, Inc	Initial Study for the Morgan Hill Sewer Trunk Line	8/7/2019	12/31/2020	E&U	\$50,404
GovernmentJobs.com, Inc. dba NEOGOVE	Online job posting, application process, and employee performance management	8/19/2019	8/20/2021	HR	\$33,000
Hinderliter de Llamas & Associates	Consultation in the Development and Implementation of a Cannabis	8/19/2019	6/30/2020	PD	\$29,500
West Coast Door and Gate	On-Call door and gate maintenance and repair services	8/19/2019	6/30/2021	CSD	\$60,000
Civic Foundry, LLC	Provide executive level management of day to day operations of the IT Division	8/19/2019	1/15/2020	PD	\$53,000

Preliminary FY2018-19 Financial Report





General Fund

- Both Revenues and Expenditures exceed budget
- Key GF revenues:

Category	Budget	Mid-Cycle Revised	Preliminary FY18-19
Property Tax	\$11,813,532	\$12,598,742	\$12,556,401
Sales Tax	9,981,124	10,542,000	10,761,811
Svc Charges	9,993,089	9,938,089	9,856,494
Hotel Tax	2,754,000	2,844,000	2,893,134

- Expenditures including encumbrances:

Total Exp	\$44,346,470	\$43,680,534	\$42,429,598
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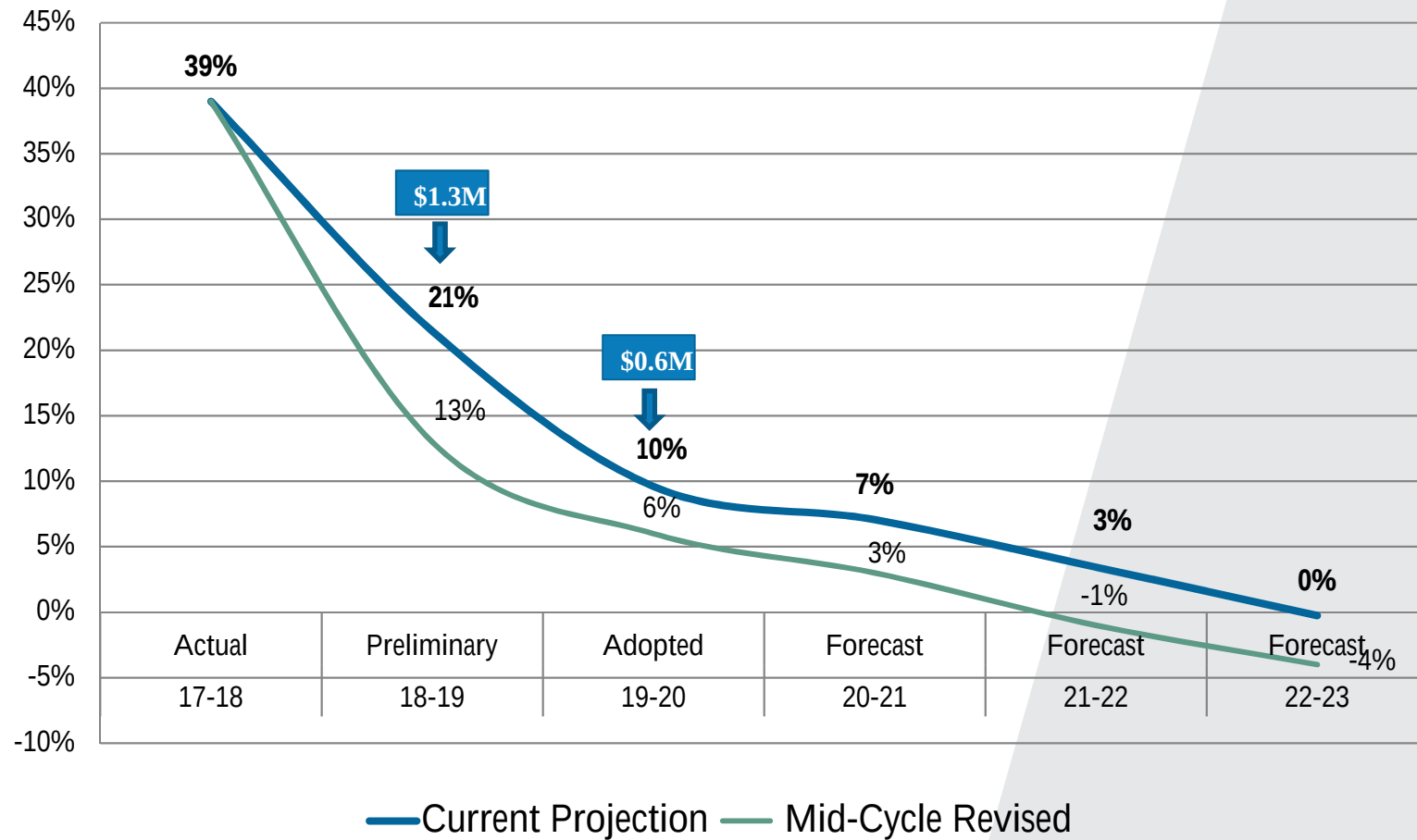


Development Services Fund

- Both revenues and expenditures are tracking within budget

Category	Budget	Mid-Cycle Revised	Preliminary FY18-19
Revenues	\$4,879,768	\$4,879,768	\$5,125,211
Expenditures	6,241,520	6,098,406	5,867,785
Net	(\$1,361,752)	(\$1,218,638)	(\$742,574)

Development Services Fund (cont'd)





Enterprise Funds

- Wastewater Operations

Category	Budget	Mid-Cycle Revised	Preliminary FY18-19
Revenues	\$10,746,851	\$11,038,397	\$11,381,125
Expenditures	11,311,787	11,030,535	10,555,037
Net	(\$564,936)	\$7,862	\$826,088

- Per City Council reserve policy – excess funds will be transferred to Wastewater capital projects fund

Enterprise Funds (cont'd)

- Wastewater operations and CIP
 - CIP needs \$34.7M over next 5 years
 - Funds Available: \$10.7M
 - Unfunded Need: \$24.0M





Enterprise Funds (cont'd)

- Water operations

Category	Budget	Mid-Cycle Revised	Preliminary FY18-19
Revenues	\$13,751,500	\$13,951,500	\$14,241,433
Expenditures	13,459,365	13,552,925	12,837,564
Net	\$292,135	\$398,575	\$1,403,869

- Per City Council reserve policy – excess funds will be transferred to Water capital projects fund

Enterprise Funds (cont'd)

- Water operations and CIP
 - CIP needs \$11.0M over next 5 years
 - Funds Available: \$6.2M
 - Unfunded Need: \$4.8M



Tonight's Recommendation

- Accept and file report
- Direct City Manager to transfer FY18-19 General Fund's surplus to City's Pension and OPEB Trusts





CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

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

APPROVE RESPONSE TO GRAND JURY REPORT TITLED "INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY"

RECOMMENDATION(S)

Authorize the City Manager to file the Response to the Civil Grand Jury Report, "Inquiry into Governance of the Valley Transportation Authority", dated June 18, 2019 with the Presiding Judge of the Santa Clara County Superior Court.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development
Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Public Safety Master Plan

REPORT NARRATIVE:

On June 18, 2019, the City of Morgan Hill received a report from the Santa Clara County Civil Grand Jury entitled "Inquiry into the Governance of the Valley Transportation Authority" (Attachment 1) containing findings and recommendations made after investigating certain aspects of the governing and operational structure of the Valley Transportation Authority (VTA).

In accordance with Penal Code Section 933(c) (Attachment 2) which requires that a governing body of a public agency or department which has been the subject to a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the finding and recommendations pertaining to matters under the control of the governing body. The City of Morgan Hill's proposed response is attached (Attachment 3) for review and consideration.

As required by California Penal Code § 933.05 (a) the City of Morgan Hill has responded to each **finding** by indicating one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

As required by California Penal Code § 933.05 (b) the City of Morgan Hill has responded to each **recommendation** with one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

COMMUNITY ENGAGEMENT: Inform

This report is intended to inform the community.

ALTERNATIVE ACTIONS:

The City of Morgan Hill is required to respond to the Grand Jury report by September 16, 2019. There are no alternative actions.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact associated with this action.

CEQA (California Environmental Quality Act): Not a project

Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are not considered a project by CEQA.

LINKS/ATTACHMENTS:

1. CGJ VTA Final Report - 06.18.19
2. 90 Day Letter - Morgan Hill - 06.18.19
3. Draft City Response
4. Palo Alto Response
5. 2019-08 Los Altos Hills - Grand Jury Response

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



2018-2019 Civil Grand Jury
of Santa Clara County

June 18, 2019

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GLOSSARY AND ABBREVIATIONS

AC Transit	Alameda County Transit. A peer transit agency to VTA.
APTA	American Public Transit Association. A national association of which VTA is a member.
BART	Bay Area Rapid Transit. A peer transit agency.
County	County of Santa Clara
CPC	Capital Program Committee. A standing committee of the VTA Board of Directors.
DOT	US Department of Transportation. A national transportation agency.
EBRC	Eastridge-BART Regional Connector. Current nomenclature for the Eastridge light rail extension (Phase 2).
Farebox recovery ratio	Fares collected from passengers divided by operating expenses.
FTA	Federal Transit Administration. A federal agency providing transit data (see NTD) and services.
HMTA	Houston Metro Transit Agency
HOV	High Occupancy Vehicle
LRT	Light rail transit [system]
MTC	Metropolitan Transportation Commission. A Bay Area regional transportation coordination and planning agency.
Next Network	VTA's Next Network is a redesign of the transit network and is one component of an agency-wide effort to make public transit faster, more frequent and more useful for Santa Clara County travelers.
NTD	National Transportation Database. Database of statistics and metrics maintained by FTA.
PUC	California Public Utilities Code
SCCTD	Santa Clara County Transit District
SCVWD	Santa Clara Valley Water District

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

VTA Santa Clara Valley Transportation Authority

VRH Vehicle Revenue Hours

SUMMARY

The Santa Clara Valley Transportation Authority (VTA) is an independent special district created by the California legislature in 1972. Initially, the Santa Clara County (County) Board of Supervisors provided direct oversight of VTA and acted as its Board of Directors. Effective January 1, 1995, pursuant to further legislation, VTA began operating under a separate Board of Directors (VTA Board) composed of elected officials from throughout the County appointed to serve by the County Board of Supervisors and the governing authorities of VTA's constituent municipalities, with the allocation of VTA Board representation generally based on population.

For many years, VTA has been plagued by declining operating performance and recurring budget gaps between projected revenues and expenses (referred to as structural financial deficits) – notwithstanding significant population growth and, in recent years, increased employment levels throughout much of Silicon Valley.

The 2003-2004 Santa Clara County Civil Grand Jury conducted an “Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority”¹ which found, among other things, that:

- The operating performance of VTA compared unfavorably to its peer organizations;
- The VTA Board had not effectively managed the finances of VTA, resulting in a substantial structural financial deficit that was projected to increase in the following year; and
- A root cause of VTA's poor performance was the governance structure of the VTA Board, which was “too large, too political, too dependent on staff, too inexperienced in some cases, and too removed from the financial and operational performance of VTA.”

To address these issues and attempt to make the VTA Board more responsive, the 2003-2004 Grand Jury proposed various changes to the Board's structure. Although responses filed by seven of VTA's constituent municipalities were supportive of some or all the recommended changes, VTA's response defended the status quo, and most of the other municipalities adopted VTA's position. Accordingly, the recommended changes were not made.

The 2008-2009 Grand Jury again examined the governance of VTA and reiterated some of the same concerns noted in the earlier report, although the focus of the 2008-2009 report was primarily on the role and functioning of the VTA Board's appointed advisory committees.

¹ http://www.scsccourt.org/court_divisions/civil/cgj/2004/BoardStructureFinancialMgmtVTA.pdf

The 2018-2019 Civil Grand Jury (Grand Jury) revisited the subject of VTA's governance and the work of the earlier grand juries and found that:

- VTA's operating performance has continued to deteriorate over the last 10 years, relative to both its own historical performance and the performance of its peers, across a wide variety of metrics;
- The VTA Board has consistently failed to adequately monitor VTA's financial performance and has taken action, albeit less than fully effective action, only in the face of imminent financial crises; and
- Despite the serious ongoing structural financial deficit, the VTA Board has been unwilling to review and reconsider decisions made years or even decades ago regarding large capital projects (and their attendant operating costs) that are no longer technologically sound or financially viable, based on their costs and projected ridership.

The Grand Jury concluded that today, more so than in 2004 or 2009, the VTA Board is in need of structural change to enable it to better protect the interests of the County's taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology and the changing needs of Silicon Valley residents. The Grand Jury recommends several changes to the governance structure and operations of the VTA Board which will improve the Board's ability to effectively perform its important oversight and strategic decision-making functions. The Grand Jury further recommends that the VTA Board consider deferral of Phase 2 of the Eastridge light rail extension project pending a full review of the future role of light rail in VTA's transit system. Such a review should study alternative ways to meet the needs of the residents of East San Jose for modern, efficient public transportation without extending a costly and outdated light rail system and worsening VTA's already precarious financial condition.

In January 2019, the incoming Chairperson of the VTA Board issued a summary of her "2019 Perspectives and Priorities"² for VTA (see Board of Director's Meeting, January 7, 2019, section 8.2). Among the goals articulated by the Chairperson was improved board governance. The Chairperson announced that she would "convene a board working group to look at a range of board governance practices," with a view to improving "board engagement and effectiveness." The Grand Jury commends the Chairperson for focusing on the important subject of governance. This report may aid the Chairperson and the rest of the Board in that endeavor.

² <http://santaclaravta.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True>

METHODOLOGY

The 2018-2019 Civil Grand Jury began this investigation of VTA on August 15, 2018 and concluded its work on May 29, 2019. The investigation primarily followed from issues highlighted in the report of the 2003-2004 Grand Jury and focused on the structure of the VTA Board of Directors, the effectiveness of its oversight of VTA's operating and financial performance, its handling of the agency's persistent structural financial deficit and its ability to address the many complex challenges facing VTA as it confronts the future of transportation in Silicon Valley. The Grand Jury employed a broad range of data gathering and investigative methods, including:

- **Site visits** were made to VTA headquarters, one of the VTA bus yards, VTA's downtown customer service center, and bus and light rail stops and stations.
- **The transit system** was used, including the purchase of Clipper Cards, riding buses and light rail trains during peak and off-peak hours, stops at and transit through Diridon Station, Eastridge, downtown and North County rail and bus facilities, and assessing access to transit stops by walking to stations and stops and using VTA parking sites.
- **Interviews** were conducted with 37 individuals (some more than once) over more than 50 hours. Interviewees included a substantial number of individuals who served as members of the VTA Board and its committees during 2018 and 2019, senior and mid-level VTA staff personnel, city and county government officials, and representatives of various community stakeholder groups.
- **Governing documents** were reviewed, including: (i) provisions of the California Public Utilities Code (PUC), which established VTA, particularly PUC Sections 100060 through 100063, which set forth the governance structure of the VTA Board; (ii) provisions of the VTA Administrative Code, adopted by the VTA Board to supplement the provisions of the PUC; and (iii) agreements among members of city groups who share representation on the VTA Board regarding the process for rotating their representation on the Board and collectively choosing their appointees. In addition, data regarding attendance records for VTA Board and committee meetings, directors' terms in office and voting records were examined.
- **Reports specific to VTA** were reviewed, including: (i) the 2003-2004 and 2008-2009 Civil Grand Jury reports and the responses thereto; (ii) a 2007 report entitled "Santa Clara Valley Transportation Authority Organizational and Financial Assessment," by the Hay Group (Hay Report); (iii) a 2008 report on VTA by the California State Auditor; (iv) a 2010 thesis entitled "Assessing Transit Performance: Recommended Performance Standards for the

Santa Clara Valley Transit Authority,” authored by a San Jose State University master degree candidate; (v) a 2016 report entitled “Transit Choices Report,” prepared for VTA by the consulting firm Jarrett Walker +Associates; and (vi) numerous public documents published by VTA and/or available on its website. These and other documents referred to in this report are listed in the Reference Section.

- **Comparisons** were made of VTA’s performance in various operating and financial categories to the performance of other transit organizations utilizing data compiled by the American Public Transportation Association (APTA), the United States Department of Transportation (DOT), The Business Insider, the Federal Transit Administration (FTA) published in the National Transit Database (NTD), the Public Transit Factbook and other federal and industry indices and metrics. Industry and “think tank” reports and articles discussing and comparing transit agency performance, including, among others, the Cato Institute, the Heritage Foundation and the Hudson Institute, were also reviewed. For purposes of comparison, operating data from peer agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco, Sacramento and San Diego were reviewed. In connection with a comparison of governance structures, other agencies, including those serving Los Angeles, Seattle, Vancouver B.C., Austin, Chicago, New York, the District of Columbia and Phoenix, were considered.
- **Attendance** at regularly scheduled meetings of the VTA Board and its committees, including the Administration and Finance Committee, Capital Program Committee (CPC), Governance and Audit Committee, and Ad Hoc Financial Stability Committee between October 2018 and May 2019, as well as Board workshops on the Future of Transportation in Silicon Valley and the proposed biennial budget for fiscal years 2020 and 2021. Audio and video recordings of some of the meetings noted above, as well as other meetings of the VTA Board and certain committees conducted from January 2018 forward were reviewed.

DISCUSSION

A Brief History of the VTA

Santa Clara County Transit District (SCCTD) was created by the County's voters in June 1972 and took over operations of three financially strapped private bus companies. SCCTD was initially managed by the County's Department of Public Works, but in 1974 became a separate agency governed directly by the County Board of Supervisors.

SCCTD initially focused on upgrading and replacing its inherited fleet of buses. Assisted by federal funding and a voter approved half-cent sales tax in 1976, SCCTD began to acquire diesel buses and build repair facilities.

In the 1980s, SCCTD embarked upon the construction of its light rail transit system, utilizing funding received from the federal government and the proceeds of additional voter-approved sales taxes. The first segment of the light rail system opened for service in late 1987, and the entire initial 21-mile system was completed in 1991. Four extensions of the system were completed by 2005, and additional extensions are currently in the planning stages.

SCCTD completed a two-part reorganization, in early 1995. SCCTD was designated the Congestion Management Agency for the County under a joint powers agreement among the County and its 15 cities. At the same time, legislation reconstituting the Board of Directors from five directors, all of whom were County Supervisors, to 12 consisting of two County Supervisors, five San José City Council members and five city council members representing the remaining 14 cities, selected on a rotating basis by the governing authorities of those cities. The name of the agency was changed to the Santa Clara Valley Transportation Authority in 1996, from which the acronym VTA was adopted.

Today, VTA is a complex, multi-billion-dollar enterprise that provides bus, light rail and paratransit services within Santa Clara County. In addition, VTA participates in funding other agencies that provide regional rail service, including Caltrain, the commuter rail line serving the San Francisco Peninsula, the Capitol Corridor operating between Silicon Valley and the Sacramento area, and the Altamont Corridor Express, connecting Stockton and San José. VTA also is responsible for county-wide transportation planning, including congestion management, the design and construction of highway, pedestrian and bicycle improvement projects, and the promotion of transit-oriented development.

Structure of the VTA Board

The present structure of the VTA Board was authorized by legislation effective January 1, 1995. In the legislation proposed by the County Board of Supervisors, the VTA Board was to have been composed of five directly elected members (corresponding to the five county supervisorial districts) and 11 appointed members of various elected bodies in the county. As ultimately adopted, the enabling legislation eliminated the directly elected directors. Instead, PUC Section 100060 provided for a Board consisting of 12 voting members and alternates, all of whom are elected public officials, with the allocation of Board representation generally based on population.

Under the formula outlined in PUC Section 100060, and further spelled out in Section 2-13 of the VTA Administrative Code, the VTA Board is composed of:

- Two voting members and one alternate who are members of the Santa Clara County Board of Supervisors;
- Five voting members and one alternate representing the City of San José;
- One voting member and one alternate representing the cities of Los Altos, Los Altos Hills, Mountain View and Palo Alto;
- One voting member and one alternate representing the cities of Campbell, Cupertino, Los Gatos, Monte Sereno and Saratoga;
- One voting member and one alternate representing the cities of Gilroy and Morgan Hill; and
- Two voting members and one alternate representing the cities of Milpitas, Santa Clara and Sunnyvale.

All the voting members and alternates, other than the County supervisors, must be currently serving as mayors or city council members of the city they represent. Each of the four groups of smaller cities may collectively determine their representative, and each group has adopted an agreement specifying, in varying degrees of detail, the manner in which the group's appointed representatives will rotate among the member cities and how individual representatives are to be selected.

PUC Section 100060(c) provides, importantly, that “[t]o the extent possible, the appointing powers shall appoint individuals to the VTA Board who have expertise, experience, or knowledge relative to transportation issues.” The VTA Administrative Code and the inter-city agreements contain similar directives.

In 2015, the Governance and Audit Committee of the VTA Board adopted a set of Guidelines for Member Agency Appointments to the VTA Board of Directors (Guidelines). The Guidelines

contain several recommendations emphasizing, among other things, the value of a candidate's expertise and prior experience on the VTA Board or its Policy Advisory Committee. The Guidelines also express the expectation that VTA Board members "[h]ave a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction," and "should be able to attend Board and standing committee meetings regularly." A full copy of the Guidelines is attached as Appendix A.

In addition to the voting members and alternates, the VTA Administrative Code provides that members of the Metropolitan Transportation Commission (MTC) who reside in Santa Clara County, and who are not voting members or alternates, shall be invited to serve as ex-officio, non-voting members of the Board³. The VTA Board currently has one such ex-officio member.

VTA Board members serve for a term of two years⁴. The VTA Administrative Code "strongly encourages" appointing authorities to reappoint representatives to successive terms, and some members do serve multiple terms⁵. One director who recently left the VTA Board had served as a director or alternate representing San José and the County for a total of 13 years, but missed eight Board meetings in his last two years of service. The two voting directors currently representing the County have served as directors or alternates for a total of 14.5 and 12.5 years. The current Mayor of San José has served as a director for 11.5 years. However, many directors who serve on a rotating basis as representatives of the smaller city groups do not serve successive terms, and directors' two-year terms are frequently cut short when they are not re-elected, term out or otherwise cease to serve in their elected position.

PUC Section 100061 requires the VTA Board to elect its Chairperson and Vice Chairperson annually. Both officers serve for terms of one calendar year, straddling two fiscal years of the VTA (July 1 to June 30). By informal convention, the Vice Chairperson one year becomes Chairperson the following year.

³ VTA Administrative Code Section 2-15

⁴ PUC Section 100060.2

⁵ VTA Administrative Code Section 2-14

The VTA Board in Action

As noted above, the VTA Board consists of a rotating group of elected public officials appointed by the County Board of Supervisors, the City of San José and the four groups of smaller cities. Although the PUC, the VTA Administrative Code and the Guidelines all admonish the appointing authorities to appoint VTA Board members who have appropriate expertise, experience and knowledge, as a practical matter, appointments are often made based more on political considerations than on the candidate's qualifications. From the candidate's point of view, appointment to the VTA Board, one of the largest agencies in the County, is generally considered a plus for his or her political advancement. Candidates often express an interest in serving on the VTA Board largely because they see service on the Board as a "resume builder." As a result, appointees to the VTA Board often have no previous experience with transportation, finance or leadership of a commercial enterprise, let alone one with annual revenues of over a half billion dollars and assets of \$5 billion. New directors often know little about VTA's operations or finances, or the organization and functioning of the Board. In our interviews, the Grand Jury learned that one director was unclear about how directors were chosen or even how many directors there are. Another, representing one of the smaller city groups, was unfamiliar with the provisions of the inter-city agreement governing appointments to the Board and considers appointments as simply the political prerogative of the mayor of the city whose turn it is to make the appointment.

Because new directors often have little or no experience with transportation agency operations or transit policy, they face a steep learning curve to even begin to become effective Board members. There is no "boot camp" for new directors. The orientation program provided by the VTA staff is brief and presents only a high-level overview of VTA and basic information regarding Board procedures. When speaking with the Grand Jury, some directors couldn't recall going through any orientation at all.

Workshops are conducted by the VTA staff, generally about twice a year, to provide background information to the directors, often focusing on a specific issue. These workshops are relatively short, sometimes poorly attended and often cancelled. For example, both director workshops scheduled to be held in 2018 were cancelled. A workshop held on February 22, 2019, ambitiously addressed the important and complex topic of "The Future of Transportation in Silicon Valley." The workshop was attended by eight of the 12 voting members of the VTA Board, three of the six alternates and the ex officio member and lasted a little over three hours. Needless to say, the workshop merely scratched the surface of the topic. A few Board members have attended transportation-related, third party-sponsored programs and seminars on their own initiative to enhance their knowledge on issues of transportation management and policy. There is no formal policy requiring or encouraging attendance at external training programs or conferences or other forms of continuing education.

Influence on the VTA Board

The City of San José dominates the VTA Board with the ability to appoint five of the 12 directors, which should not be unexpected given San José's share of the County's population. Although the San José directors technically are appointed by the San José City Council, the Mayor recommends those appointments. Thus, the Mayor effectively controls the initial selection of the San José directors as well as their tenure on the Board and, therefore, has the ability to exercise considerable influence over a substantial portion of the VTA Board. Since some members of the County Board of Supervisors who have served on the VTA Board previously served on the San José City Council or represented supervisorial districts within San José, these relationships may further enhance San José's dominance on the VTA Board.

Given that representatives of the City of San José and the County Board of Supervisors are often able to serve multiple terms on the VTA Board, they gain experience and the ability to add value. However, representatives of the smaller city groups are subject to the rotational provisions of their inter-city agreements, limiting their ability to serve consecutive terms. Accordingly, the San José and County representatives often dominate the Board in terms of experience and influence as well as numbers. Current voting members of the VTA Board representing San José and the County have served an average of 4.3 years and 10.5 years, respectively, including non-concurrent terms but excluding service by some of them as alternates. However, the current voting members representing the smaller cities have served an average of only 1.9 years.

Board Member Preparation

All of the members of the VTA Board are primarily focused on their other duties as local elected officials; their position on the VTA Board is clearly of secondary importance to most, if not all, directors and, as noted above, viewed by some principally as a "resume builder" and a one day a month job. Directors confront their other duties as elected officials and, in the case of smaller city directors, private employment or business interests, which themselves may be demanding and time-consuming.

Directors often find it difficult to digest the massive amounts of information provided to them by the VTA staff to help them fulfill their responsibilities and prepare for meaningful participation in Board meetings. For example, meeting materials for VTA Board meetings typically run more than 300 pages, and committee meeting packages can be as voluminous. Here too the representatives of the smaller city groups are at a disadvantage. While members of the County Board of Supervisors and the San José City Council have dedicated staffs that can help them review and distill VTA-supplied materials and analyze issues, the representatives of the smaller city groups have little or no staff support. Although members of the VTA staff make themselves available to

meet with directors to discuss VTA business, particularly in advance of monthly meetings, the Grand Jury learned that some directors take little or no advantage of these opportunities.

VTA Committees

Like many complex organizations — both governmental and private — the VTA Board maintains a system of standing committees. These include the Administration and Finance Committee, the CPC, and the Governance and Audit Committee, among others. The Board also has a number of advisory committees and occasionally appoints ad hoc committees to deal with specific matters. For example, the Ad Hoc Financial Stability Committee (which will be discussed further in this report) was formed in January 2018 and was active throughout 2018.

The Board's committee structure is both a benefit and a detriment. Because Board members have other public and private commitments, it is challenging to deal with all the complex issues affecting VTA; thus, delegation of certain responsibilities is necessary.

On the other hand, the committee structure tends to create a certain level of disengagement. Board members are assigned by the Chairperson to serve on standing committees. Several interviewees expressed the opinion that committee assignments are often made with little or no input from the affected Board members, and some committee members only learn of their appointment when they see their name on a list. Because of their various time commitments, Board members often are unfamiliar with or just defer to and trust the staff and their fellow directors regarding issues passed upon initially by committees of which they are not members. When those issues come before the full Board, often by way of its consent calendar, there is little or no discussion or debate. In some cases, matters of some significance are also placed on the consent calendar at the committee level, with the result that only the staff conducts any significant review of the matter. This system works well for some topics, like the approval of construction contracts, but can leave many directors uninformed about important topics to which the full Board should be attentive. Topics like monitoring VTA's financial affairs and structural financial deficit (which is principally left to the Administration and Finance Committee) and major ongoing capital programs, which are monitored by the CPC demand full engagement by all directors. At the October 2018 Board meeting, in reference to a report on the consent calendar, one of the directors stated, "Instead of going to committee, this type of report should go to the full Board...We should have [Board] workshops on several of these reports."

Alternate VTA Board Members

Like the use of committees, the system of alternate Board members has both advantages and disadvantages. Alternate members cannot vote at meetings except when they are attending in place of a voting member. Accordingly, alternate members often do not attend Board or committee meetings. If they attend meetings at all, they typically sit in the audience and do not participate. The existence of alternate Board members is useful in securing a quorum at Board and committee meetings when a voting member is absent. However, the availability of an alternate can serve as justification for voting members to make meetings a lower priority. Additionally, because alternate members frequently are called upon at the last minute, they may be even less prepared than voting members with the agenda and meeting materials. The alternate faces the decision to vote on matters in accordance with his or her own beliefs and opinions, or to vote the way he or she believes the voting member being replaced would have voted. This type of voting “by proxy” is inconsistent with good governance practices and would not be permitted by members of a corporate board of directors.

VTA Board Meetings

The VTA Board meets once a month in the evening. Board committees meet between three and 11 times a year. Attendance at Board and committee meetings varies greatly. Data compiled by the Grand Jury show that during 2017, 2018 and the first four months of 2019, attendance by voting members at Board meetings and workshops averaged approximately 87%. Individual attendance ranged from 61 to 92%. During the same period, attendance by voting members at committee meetings averaged approximately 86%. Often, directors arrive at meetings late, step away from the meeting, or leave early, but their partial participation is not always reflected in the attendance records. The conduct of Board meetings observed by the Grand Jury is characterized by limited debate and discussion, typically with active participation by only a few directors and some directors not participating at all.

The Board does very little on an ongoing basis to monitor and assess directors’ performance. The Grand Jury learned from our interviews that guidelines were developed to aid the Board in measuring its effectiveness, but no action has been taken to implement these guidelines. Board members receive a self-assessment questionnaire at the end of the year, but, according to several interviewees, many are not completed or returned, and no action is taken to follow up or seek feedback.

VTA Board Effectiveness

In short, the VTA Board suffers from:

- a lack of experience and continuity by many directors;
- dominance, in terms of numbers, seniority and influence, by representatives of San José and the County;
- inadequate time for the directors to devote to the Board's oversight and policy-making functions;
- a lack of engagement by some of the directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization; and
- conflicts of interest, which are often irresolvable, between the directors' fiduciary duty to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

In assessing the effectiveness of VTA, several preliminary observations are in order.

First, nothing in this report is meant to suggest that the members of the VTA Board are not honorable and hard-working public servants who are doing their best to perform the duties of a very difficult position under extremely difficult circumstances.

Similarly, the Grand Jury has found that the VTA senior management staff is a competent team of professionals doing their best to run a very complex organization within the policy guidance provided by the VTA Board. As one member of the Board stated at the February directors' workshop, "the staff is like a racehorse that we are keeping in the starting gate." For their part, members of the senior staff are sometimes reluctant to draw the Board's attention to matters of concern where they realize there is political resistance on the part of some directors and feel that raising an issue would be a waste of time. Some senior staff members are frustrated by what they perceive as an unwillingness of the Board to support needed action or make important changes at the policy level. Several staff members pointed to other transit districts, such as those in Portland, Austin and San Diego, as agencies whose policymakers are prepared to make tough decisions and take risks to improve public transit. According to some staff members and directors, this frustration, in part, has resulted in a general decline in morale at the senior staff level. The process used in the recent reorganization of senior staff responsibilities has contributed to additional morale problems. Some key members of senior management have recently announced that they will be leaving VTA.

The Grand Jury also recognizes that many of the problems facing VTA are not unique to it as a transit organization or to the specific geographic or demographic characteristics of the Silicon Valley. Like many other transit organizations, VTA must deal with nationwide transportation trends, including increasing congestion and competition from ride-hailing companies and corporate-run employee bus services, as well as looming challenges posed by autonomous, driverless vehicles. Moreover, operating a transit system in a largely suburban region presents greater challenges than are typically faced in more densely populated urban areas, having concentrated downtown business centers. It is because of the complex and evolving nature of the problems facing VTA that active and enlightened Board oversight and strategic vision are more essential than ever to the organization's future success.

Having those observations in mind, the Grand Jury has noted that VTA and the VTA Board have been subject to criticism over the years from various quarters. As described above, the 2003-2004 and 2008-2009 Grand Juries were critical of the Board and its governance structure. However, criticism of the management and Board of VTA has not been limited to the Civil Grand Jury. A number of investigations, studies and articles, including the Hay Report which was commissioned by VTA itself, have criticized VTA's operational and financial performance and the effectiveness of VTA governance. In 2007, one writer referred to VTA as possibly "the nation's worst managed transit agency, at least among those serving big cities."⁶ Even members of the VTA Board have questioned the Board's effectiveness. For example, at a meeting of the VTA Board in October 2018, one director made the comment, "we have to break the mold of 'same ole, same ole'...Board, we have to step up and change things." Upon assuming her position in January 2019, the current Chairperson of the VTA Board announced that she would "convene a board working group [later designated the Ad Hoc Board Enhancement Committee] to look at a range of board governance practices" with a view to improving "board engagement and effectiveness."⁷ At the Board workshop in February 2019, the participating directors, by a unanimous show of hands, agreed that VTA needs to make "radical changes" to address its many challenges. As one director put it, "We just had a workshop where we had a long conversation and we pretty much had a consensus where we have to do things differently and think outside the box." The Ad Hoc Board Enhancement Committee held its first meeting on May 29, 2019.

A complete review and assessment of the operations and management of VTA is far beyond the means of the Grand Jury or the scope of this report. Accordingly, the Grand Jury has chosen to focus its attention on the consideration of the effectiveness of the VTA Board's oversight and policymaking, as exemplified by three areas of concern:

- VTA's poor and continually deteriorating operating performance;

⁶ "The Nation's Worst Transit Agency", The Antiplanner, March 26, 2007

⁷ <http://santaclaravta.ig2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True> . See section 8.2 of Minutes for the January 9, 2019 Board of Directors meeting.

- the VTA Board's inadequate oversight of the agency's financial performance and its structural financial deficit; and
- the VTA Board's unwillingness, to date, to reconsider the merits of significant pending capital projects that may be indicative of its general ability to guide the organization strategically.

VTA's Operating Performance

VTA Operating Trends

The 2003-2004 Grand Jury reviewed VTA's operations and found that its operating performance compared unfavorably to its own benchmarks as well as the performance of peer agencies. Among other things, its report noted that:

- VTA's operating costs had risen substantially faster than the rate of inflation; and
- Fares collected from VTA's passengers divided by VTA's operating expenses (referred to as the farebox recovery ratio) for the previous two years had been 11.6% and 12%, compared to the national average of more than 20%, meaning that the taxpayers of Santa Clara County were providing a much greater than average subsidy of transit operations.

The 2018-2019 Grand Jury again examined VTA's operating statistics and found that VTA's performance has continued to deteriorate over the past 10 years, relative to both its historical performance and the performance of its peers, across a wide variety of metrics, including continuing increases in operating costs and further reductions in farebox recovery.

Since the 2008-2009 recession, the population of Santa Clara County has increased by approximately 10.6%. During that 10-year period, bus and light rail vehicle revenue hours (VRH), which measures the amount of service VTA offers, increased by 6.4% while operations employee headcount (i.e., operators and maintenance personnel) grew by 8.9%. Total operations expense rose by 63.2% between 2009 and 2018, including a one-year increase of 17.1% between 2017 and 2018 alone. As operations expense increased, overall farebox recovery declined from 13.5% in 2009 to 9.3% in 2017 – substantially worse than the ratios that the 2003-2004 Grand Jury cited as unacceptably low back in 2004.

Meanwhile, despite increases in employment and income levels in Silicon Valley, the public's actual *use* of VTA's services (as measured by passenger trips on buses and light rail) dropped by 19.2% between 2009 and 2018 and by 14.8% in the last two years alone. According to U.S. Census Bureau data, in 2017 (the last year for which such data is available), public transit was used as a means of transportation to work by only 4.8% of Santa Clara County's commuters, little more than the combined percentage of those who walked or biked to work and fewer than the 5.3% who worked at home. Despite the declining use of transit during the last ten years, VTA continued to increase its employee headcount (both operations employees and administrative staff) and add to its fleet of buses and train cars, further increasing operating expense.

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

As a result of the dramatic increases in operations expense and the concurrent decline in ridership, VTA's cost per passenger trip for buses and light rail combined increased from \$5.61 in 2009 to \$9.30 in 2017, 90.5% of which was covered by taxpayer subsidies.

Detailed data regarding VTA's operations are shown in Appendix B, and the trends discussed above are depicted in Figure 1 below.

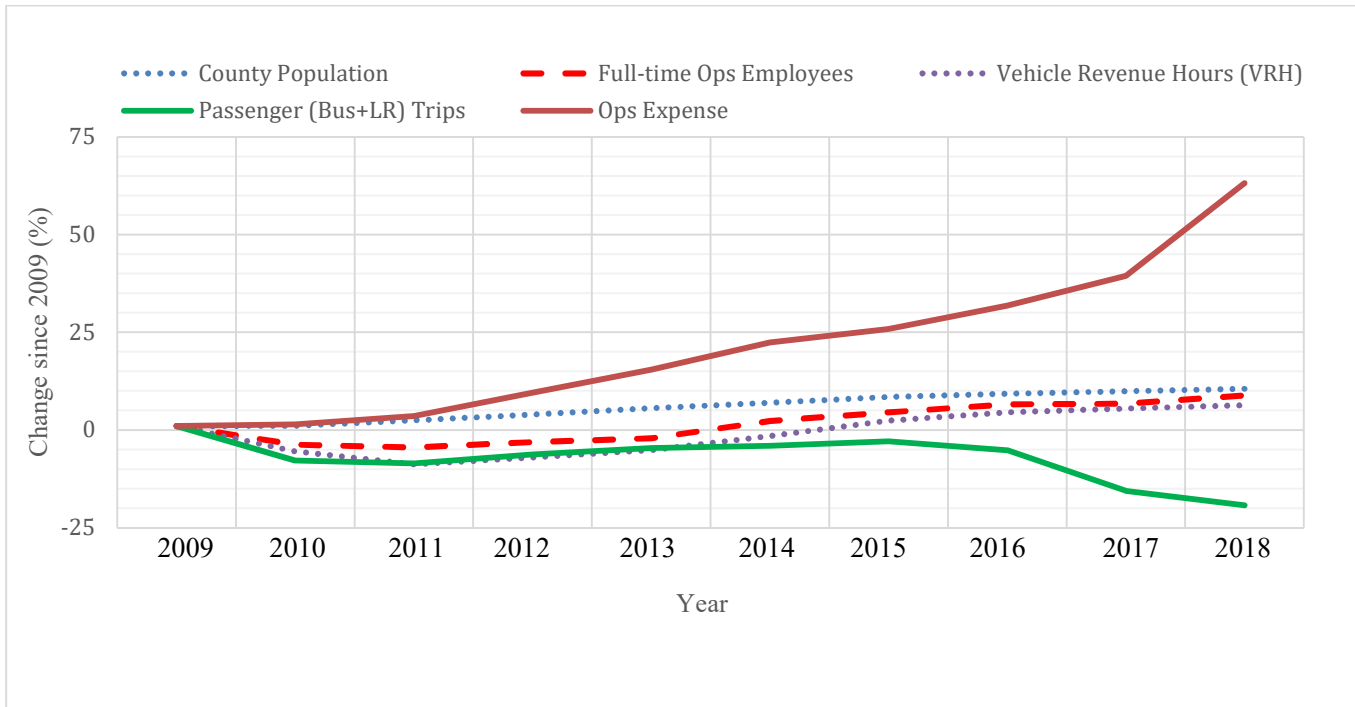


Figure 1 - VTA Operations Trends since 2009

Peer Agency Comparison

The FTA issues an annual NTD report summarizing nationwide data and trends for transit agencies throughout the United States. In its most recent survey, for 2017, the FTA reported that for transit agencies serving populations of more than one million people:

- Operating cost per passenger trip for buses and light rail ranged from a low of \$3.27 to a high of \$9.31 with VTA's cost per trip of \$9.28 nearly the highest in the nation;
- Operating expense per revenue hour ranged from a low of \$84.82 to a median of \$123.20 and a high of \$249.83 with VTA's operating expense per revenue hour of \$199.79 at about the top 10th percentile in the nation; and

- Farebox recovery for light rail systems (combined bus and light rail data was not available) ranged from 7.6% to 47.2% with VTA's light rail system farebox recovery of 7.6%, the lowest in the nation, requiring taxpayers to subsidize 92.4% of the cost of light rail service.

Since the FTA surveys contain data for more than 800 transit agencies, including many with operating environments that differ significantly from VTA's, the Grand Jury selected a cohort of ten peer agencies for further review using the following guidelines:

- Only agencies operating both buses and light rail systems were included;
- Only agencies serving urbanized communities with population and service areas generally comparable to VTA's were included; and
- Agencies identified as VTA's peers by interviewees or transit experts were also considered for inclusion.

Based on these guidelines, public transit agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco (SF), Sacramento and San Diego were chosen for comparison.

Comparisons of FTA operating data for the 10 peer agencies from 2009 through 2017 are shown in Appendix C. In summary, comparative data for three key metrics show the following:

- **Operating Cost per Trip:** VTA's operating cost per trip was the highest of all 10 peer agencies in each of the nine years. In addition, VTA's cost per trip increased by 65% over the period, second only to Sacramento's increase of 86%.
- **Passenger Trips per Revenue Hour:** The effectiveness of VTA's service, as measured by the number of passenger trips per revenue hour, was consistently among the lowest of the peer group, and second lowest in 2017 and 2018. San Diego, with a lower population density than VTA's, achieved almost twice the ridership per hour as VTA in the last five years. Not surprisingly, San Francisco, with its significantly greater population density, consistently recorded the highest number of trips per hour.
- **Farebox Recovery:** VTA had the lowest farebox recovery in the peer group for its total operations since 2012.

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

Table 1 below summarizes VTA's operating performance in 2017 relative to the peer group.

Table 1 - VTA Operating Performance Versus Peer Group in 2017

Performance Measure		10-Peer Average	Best	Worst	VTA Rating
Service Effectiveness	Passenger Trips per Revenue Hour	34.0	63.8 (SF Muni)	23.4 (Dallas)	24.3 (2nd to last)
Service Efficiency	Operating Cost per Passenger Trip	\$5.30	\$3.00 (San Diego)	\$9.30 (VTA)	\$9.30 (Last)
	Farebox Recovery Ratio	21.5%	34.7% (San Diego)	9.3% (VTA)	9.3% (Last)

In short, while all VTA's peer agencies suffered declines in ridership over the last decade, all but one of the other agencies were more successful than VTA at controlling increases in costs.

It is important to note that, despite the continuing decline in key operating metrics, between 2016 and 2019, VTA's operations management has successfully improved performance in a number of significant areas, including: a 20% improvement in miles between major mechanical schedule loss; a 24% reduction in passenger concerns (complaints); a 3% improvement in light rail miles between chargeable accidents; and a 7% improvement in light rail on-time performance. In addition, the Grand Jury had direct experience utilizing VTA transportation services during our investigation and observed vehicles that were clean, performance that was generally on-time, and operators who were friendly and resourceful.

VTA's Financial Management

VTA is highly dependent on sales tax for its operating revenue. Currently, sales tax receipts provide approximately 80% of VTA's revenue, while farebox revenue provides about 7%. Remarkably, in an environment of robust population and economic growth, VTA's farebox receipts have decreased from \$36.2 million in 2009 to \$34.5 million in 2018, a decline of 5%. Over that same period, operating expenses have increased by a staggering 51%. Adding further pressure to VTA's revenue stream is the steadily decreasing contribution of federal operating grants, which peaked at \$59 million in 2010 and fell to \$3.8 million in 2018.

To address its revenue shortfall, VTA has begun to tap Measure A and Measure B sales tax receipts, originally earmarked for capital improvements, to help fund transit operations. For 2018 and 2019, the VTA Board approved the transfer of \$44 million and \$14 million, respectively, of these funds to supplement VTA's operating revenue. To further address the shortfall, VTA has drawn down its reserves to help fund operating deficits.

Given its history of low fare collections, declining ridership and uncertain governmental assistance, the answer would seem to be increased attention to cost management, with an emphasis on labor costs, by far the largest component of VTA's operating expense. However, VTA's combined operations and administrative headcount continues to rise each year despite the decline in ridership. The Grand Jury found the VTA Board has not vigorously addressed these issues through its budget process by embracing the type of comprehensive cost management strategy that is called for by the environment of limited resources in which VTA is currently operating.

The 2018-2019 Budget Process

VTA operates on a biennial budget cycle with a budget for the following two fiscal years adopted in June of each odd-numbered year. The proposed budget is reviewed by the Administration and Finance Committee and forwarded to the full VTA Board with the Committee's recommendation.

The proposed 2018-2019 budget, as recommended by a three-to-one vote of the Administration and Finance Committee in May 2017, showed projected operating deficits of \$20 million and \$26 million for fiscal years 2018 and 2019, respectively, and similar deficits for subsequent years. Taking into account the annual need for local funds on the order of \$30 million to support VTA's capital programs, the total gap between projected revenues and expenses (referred to as a structural financial deficit) contemplated by the budget was between \$50 and \$60 million. Compounding the widening budget gap was the fact that, over the preceding six years, operating expenses had grown twice as fast as revenues, and VTA had consistently failed to meet its ridership and farebox recovery projections. For example, in fiscal years 2016 and 2017, VTA's farebox recovery had fallen short of budget projections by 7.3% and 18.9%, respectively.

Nevertheless, rather than undertaking a thorough review of the proposed budget and making hard decisions regarding meaningful reductions in operating and capital expenses, or even sending the budget back to the Committee for further study, the VTA Board adopted the budget on June 1, 2017, by a vote of eleven to one, thereby assuring operating deficits for the following two years.

To no one's surprise, the projected operating deficits materialized and were largely funded by drawing down VTA's reserves. Capital reserves, which had stood at \$49.5 million at June 30, 2017, had been depleted to \$5 million by the middle of the following year.

Ad Hoc Financial Stability Committee

In January 2018, the incoming Chairperson of the VTA Board recognized that some action had to be taken to address the structural deficit problem, which had become critical. Rather than engaging the full Board, for example by convening an all-day workshop, to address the problem that the Board and the Administration and Finance Committee should have been actively monitoring all along, the Chairperson chose to create an Ad Hoc Financial Stability Committee. The Committee was chaired by an ex officio member of the Board and included only two actual voting directors. The Committee then invited a group of approximately 12 "stakeholders" to participate. Stakeholders included employees, representatives of organized labor and several individuals from community organizations – each with their own agenda, but none with the fiduciary duty to make tough policy decisions solely in the best interests of VTA and County taxpayers. As the 2003-2004 Grand Jury report noted, "[i]t is the fiduciary responsibility of the Board, not a committee, a business lobbying group, or business community leaders, to provide oversight and direction" regarding VTA's operations and financial management.

The use of an ad hoc committee was hardly a new concept for the VTA Board. The Board had historically followed a pattern of waiting for a financial crisis to arise and then appointing an ad hoc committee. That committee would attempt to deal with the crisis and come up with a fix. In most cases, the fix would last a few years, relying primarily on new sources of revenue that would hopefully emerge. However, in any event, the composition of the Board — and responsibility for dealing with the problem — would have changed. The Board would then realize that another financial crisis was taking place, and the process would be repeated. Most recently, Ad Hoc Financial Stability Committees had been formed to deal with financial crises in 2001 and 2010.

The Ad Hoc Financial Stability Committee met sporadically between March and December 2018 to discuss the structural deficit, its implications and potential cost-saving measures. Three of the nine scheduled meetings were cancelled. At a meeting of the Committee in August 2018, in response to a question, VTA's Chief Financial Officer underscored the urgency of VTA's financial situation by stating that VTA could continue its operations for no more than 18 to 24 months before

going “off a cliff.” On June 20, 2018, the Committee held a three-hour workshop to discuss strategies and solutions to address the budget and structural deficit. During the workshop, the stakeholders broke out into working groups to consider possible solutions. Although no consensus was reached, a wide variety of suggestions were made, which were reviewed by the VTA staff and discussed at subsequent meetings. These recommendations included, among other things, substantial fare increases, implementation of wage cuts, a hiring freeze, a reduction of fleet size, and a delay of further capital expenditures on light rail expansion.

At its final meeting in December 2018, the Ad Hoc Financial Stability Committee concluded that the defeat in November of a ballot measure to repeal fuel taxes and vehicle fees (California Proposition 6) and the collection of sales tax on out-of-state sales beginning at some unspecified point in the future (later determined to be April 2019) would infuse additional revenues into the budget. The fuel and vehicle monies would result in an additional \$23 to \$27 million per year in annual revenues. The sales tax would, when implemented, increase revenues by \$5.5 million per year. After these painless fixes, the Committee then addressed the annual structural deficit of approximately \$25 million that still remained by proposing three initiatives:

- reducing the proposed increase in bus and rail service hours – not from their actual fiscal 2018 levels, but from the even higher levels originally budgeted for fiscal year 2019 as a part of VTA’s Next Network program – saving approximately \$15 million annually;
- a fare increase indexed to inflation, saving approximately \$2 million annually (which was subsequently deferred until 2021); and
- a voluntary early-retirement program projected to save another \$1 million annually.

After six meetings over a nine-month period (including the three-hour workshop) involving three directors and a dozen stakeholders, as well as untold hours of VTA staff support time, the Ad Hoc Financial Stability Committee recommended a total of only \$18 million in projected cost savings to address the remaining \$25 million deficit target, leaving a \$7 million gap unaddressed. Several serious cost-cutting measures brought forward at the workshop were not actively considered. At its meeting, on December 6, 2018, the VTA Board unanimously accepted the recommendations of the Committee, and the Committee stood down.

By any measure, the VTA Board’s oversight of the agency’s financial affairs, as exemplified by its adoption of the 2018-2019 budget and the handling of the built-in structural financial deficit, has been weak and ineffective. The inability of the VTA Board to meaningfully address the deficit can be attributed, in part, to the lack of financial expertise on the Board, a lack of preparation and engagement on the part of some directors — exacerbated by the delegation of the problem to the Ad Hoc Financial Stability Committee — and the VTA Board’s inability or unwillingness to deal

with controversial and politically-charged topics such as labor costs and expensive capital programs.

The 2020-2021 Budget Process

The VTA Board will consider VTA's proposed biennial budget for fiscal years 2020 and 2021 at its meeting on June 6, 2019. The proposed budget shows net surpluses of approximately \$2 million in 2020 and \$4 million in 2021. However, the proposed budget does not take into account the outcome of pending labor negotiations with the Amalgamated Transit Union (ATU) that have been ongoing since August 2018. VTA has reported that its current proposal to the ATU, if accepted, would result in a total additional cost of \$30.9 million over the next three years. Since the VTA's proposal is the best possible outcome of the negotiations, the budget understates expenses and virtually assures continuing deficits. Other risks acknowledged in the budget could further increase these deficits.

The Extension of Light Rail Service to Eastridge

Light Rail in the United States

Light rail transports people using electric motive power and light-weight rails (hence the name). Light rail transit (LRT) systems, originally called trams or trolleys, evolved in the early 1900s to move employees to businesses and industries located in downtown or central business districts. They were less expensive to build than traditional heavy railway systems, and the cars were likewise less expensive to build and operate.

In the late 1960s, private transportation companies, including those that operated LRT systems, began to struggle financially and subsequently were transitioned to public ownership with the expectation that better public transport could be achieved using a mix of city, state and federal funding.

LRT systems in the United States have not met the original expectations of transit planners or the public. Coupled with the downward trend of public transit ridership and expanding infrastructure regulations, LRT systems have experienced ever-increasing installation and operations costs. Due in part to its high costs and fixed routes, light rail is now viewed by many industry experts as a technology whose time has passed. In October 2017, Randal O'Toole, a senior fellow with the Cato Institute and a recognized expert in light rail policy analysis, recommended the following:⁸

“First, transit agencies should stop building rail transit. Buses made most rail transit obsolete nearly 90 years ago. Buses can move more people faster, more safely, and for far less money than light rail, meaning light rail was obsolete even before San Diego built the nation’s first modern light-rail line in 1981.” ...

“Second, as existing rail lines wear out, transit agencies should replace them with buses. The costs of rehabilitating lines that have suffered from years of deferred maintenance is nearly as great as (if not greater than) the cost of building them in the first place.”

Cities whose densities and post-automobile development sprawl aren’t particularly suitable for efficient light rail service have begun to reexamine the viability of constructing, operating and maintaining expensive light rail systems. For example, in March of this year, the Phoenix City Council voted to delay and likely kill an ambitious expansion of its existing light rail system. Calling it a “train to nowhere,” city leaders determined that the reallocation of capital funds from light rail to an expansion of a flexible bus system and the repair of a deteriorating road system would be a better use of the taxpayers’ money and have a more positive impact on transit

⁸ “The Coming Transit Apocalypse”, Randal O’Toole, Cato Institute, October 2017

effectiveness.⁹ A Phoenix Arizona initiative measure that will be on the ballot in August 2019 proposes to halt six additional light rail extension projects that were previously approved by the Phoenix voters in 2015 and forbid the city from funding any other future light rail extensions.¹⁰

VTA's Light Rail System

Santa Clara County's LRT system, first proposed in the early 1980s, was conceived as a loop connecting to a future integration of Bay Area Rapid Transit (BART) and the San José Airport with transfer points throughout the County with feeder lines to support access to and from the loop to business and residential areas. The intent was to transport large numbers of residents quickly — at upwards of 55 mph — and cost-efficiently to and from jobs, entertainment and shopping, and to link San José and Santa Clara County with the entire BART system. As funding issues arose and interest group views emerged, the loop concept was abandoned in favor of direct spoke-like connections between downtown centers (e.g., San José) and various residential and business areas.

VTA's LRT began service in December 1987 with a 6.8-mile corridor between Santa Clara and downtown San José. An additional 14.3 miles were added by 1991 in 5 separate extensions (under the auspices of the SCCTD). VTA then followed with 4 more extensions: into Mountain View (1999), Milpitas (2001), East San José (2004) and the last corridor, Diridon to Winchester, completed in October 2005. The ultimate construction cost of this system was almost \$2 billion. Today, VTA operates a 3-line LRT system consisting of 42 route miles, 61 stations and 21 park-n-ride lots. Due to unprecedented declines in revenues beginning in 2008, the implementation plan for further light rail expansion was modified to provide for construction of additional extensions in phases. Two significant extensions, to Eastridge and Vasona Junction, remain under consideration by VTA.

Overly optimistic ridership projections justified the construction of the \$2 billion light rail system in an environment that did not have the trip densities necessary to support this mode of transit. The federal government had its own doubts and initially did not approve funding, thereby creating the necessity of funding the project, in part, with local tax measures.

As suggested above, the design and layout of the VTA LRT system deviated from the initial concepts, largely driven by political and financial considerations rather than strategic decisions. Despite the high capital costs of the system, the airport remains inaccessible directly via light rail, there is uneven access to jobs, entertainment and shopping, and operating speeds are far below

⁹ "Phoenix Votes to Delay, Likely Kill, West Phoenix Light-Rail Line", Jessica Boehm, Arizona Republic, March 21, 2019

¹⁰ "Phoenix Voters Could Kill Light Rail to These 6 Neighborhoods", Jessica Boehm, Arizona Republic, April 15, 2019

those expected or technically feasible. VTA LRT has been in operation for over 30 years but continues to underperform in effectiveness and ridership.

VTA LRT Operational and Financial Challenges

Since its inception, VTA's light rail system has struggled with operational and financial inefficiencies caused by low ridership and high operating costs. Despite a vibrant local economy with burgeoning job growth and population expansion, the public's interest in and utilization of light rail has deteriorated. Over the past ten years, light rail ridership has declined by 21% and, currently, fewer than 1% of Santa Clara County residents regularly utilize light rail. During the same period, the farebox recovery ratio for light rail has declined 36%. In just the past *five* years, light rail ridership has declined 15% while operating expenses have increased 54%. Meanwhile, VTA has continued to increase capacity without a corresponding demand for its product, resulting in higher operating costs of which less than 8% is covered by fare revenue. Put more bluntly, the taxpayers pay for more than 92% of the LRT system's operating costs. VTA has failed to accurately estimate the ongoing operating and capital costs of maintaining the light rail system, a fact that has led, in part, to its recurring financial deficits.

Table 2 below outlines metrics comparing operations of VTA's light rail system versus its peers (using 2017 NTD data) that reveal its poor performance, including:

- Cost per Passenger: Highest among peers (\$11.61)
- Subsidy per Passenger Trip: Highest among peers (\$10.73)
- Operating Cost per Hour: Highest among peers (\$487.58)
- Farebox Recovery Ratio: Lowest among peers (7.6%)
- Passenger Trips: Lowest among peers (9.1 million miles)
- Passengers Boarded per Hour: Second lowest among peers (42)

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Table 2 - VTA Light Rail Peer Statistics (2017)

Peer Agency Name	Service Area Population	Route Miles	Fare Revenue Earned (\$Ms)	Total Operating Costs (\$Ms)	Farebox Recovery Ratio	Operating Cost per Hour	Boardings per Hour	Passenger Trips (Ms)	Cost per Passenger	Revenue per Passenger	Subsidy per Passenger
Santa Clara VTA	1,664,496	42.2	\$8.06	\$106.0	7.6%	\$487.58	42	9.1	\$11.61	\$0.88	\$10.73
Sacramento Regional Transit District	1,723,634	42.9	\$14.80	\$67.8	21.8%	\$272.55	46	11.4	\$5.93	\$1.29	\$3.64
Dallas Area Rapid Transit	5,121,892	93	\$27.71	\$175.2	15.8%	\$356.20	61	29.9	\$5.84	\$0.92	\$4.92
Denver Regional Transportation District	2,374,203	58.5	\$38.16	\$115.2	33.1%	\$145.09	31	24.6	\$4.67	\$1.55	\$3.12
San Francisco Municipal Railway	3,281,212	36.8	\$39.22	\$213.8	18.4%	\$368.95	88	50.9	\$4.19	\$0.77	\$3.42
Houston Metropolitan Transit Authority	4,944,332	22.7	\$5.97	\$65.2	9.2%	\$227.04	63	18.3	\$3.56	\$0.33	\$3.23
Portland Tri-County Metropolitan Transportation District	1,849,898	60	\$49.38	\$138.8	35.6%	\$222.51	63	39.7	\$3.49	\$1.24	\$2.25
Salt Lake City Utah Transit Authority	1,021,243	44.8	\$17.97	\$64.7	27.8%	\$180.35	52	18.8	\$3.44	\$0.95	\$2.49
Minneapolis Metro Transit	2,650,890	23	\$24.14	\$70.9	34.0%	\$166.23	55	23.8	\$2.98	\$1.01	\$1.97
San Diego Metropolitan Transit System	2,956,746	53.5	\$38.97	\$82.5	47.3%	\$168.24	76	37.6	\$2.19	\$1.04	\$1.15

Legend: Ms = value in millions

Worst in peer group

2nd worst in peer group

In light of the VTA LRT system's intrinsic design issues, unacceptably slow speeds in portions of its routes, extremely high operating costs and the lack of ridership and revenue to support those costs, a case can be made for dismantling or phasing out the light rail system altogether. At a meeting of the CPC on March 28, 2019, a member of the VTA staff responded to a question from a Board member by confirming that operating costs could be cut in half and farebox recovery doubled if a bus-only system were deployed. In fact, light rail operating expenses are closer to three times the cost of bus operations, but the point remains that a large reduction in the taxpayer subsidy of VTA operations could be achieved by focusing future investment in transit solutions other than light rail, as Phoenix has decided to do. One director noted at the March 28, 2019 CPC

meeting, “We have to really broaden our thought process with regard to light rail. The worst position that VTA can get into is being the last transit agency to be deploying an old technology.”

The Eastridge LRT Extension

Although operating statistics demonstrate the high cost and inefficiency of light rail as a mode of transportation, the VTA Board has continued to consider construction of two additional light rail extensions that would require additional capital outlays in the hundreds of millions of dollars.

These two extension projects, to Vasona Junction and the Eastridge Transit Center, have been in the planning stage for years, have been the subject of countless VTA staff studies and reports and have been considered by the Board and its committees, particularly the CPC, at numerous meetings. Finally, at its meeting on March 28, 2019, the CPC approved placing the Vasona project on an indefinite hold, based on its capital costs, high operating costs and projected ridership that failed to meet VTA’s minimum criteria for a new project. However, the Eastridge project remains alive.

The proposed Eastridge light rail extension is part of a two-phase project. Phase 1 of the project, which included conceptual design, pedestrian and bus improvements, and improvements of the Eastridge Transit Center, has been completed. Phase 2, which is now referred to as the Eastridge-BART Regional Connection, or EBRC, would add a 2.4-mile rail line and related infrastructure connecting the Alum Rock Station and the Eastridge Transit Center. In the original design, most of the rail extension was to have been constructed at street level on Capitol Expressway. The design was subsequently changed to an elevated track above the roadway for the entire 2.4 miles at an estimated additional cost of \$75 million, which would enable the trains to run at higher speeds. The total cost of the project, which was originally estimated at \$377 million, is now projected to be \$599 million, of which \$146 million has been spent on Phase 1, and \$453 million would be spent on Phase 2 (\$13 million has been spent to date on design and other preparatory work). If Phase 2 is continued, work is currently estimated to be completed in 2025.

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Table 3 below outlines the cost and status of the Eastridge project*:

Table 3 - Eastridge (EBRC) Phases, Costs and Status

Project	Cost	Sub-total Cost	Status	Notes
Concept	\$11M		Completed	
Original Construction	\$56M		Completed	
Phase 1 – pedestrian improvements	\$19M		Completed	
Phase 1 – bus improvements	\$60M		Completed	Eastridge Transit Center
Phase 1 sub-total	-	\$146M		
Phase 2 – EBRC various studies/design	\$13M		Initial design work completed	
Phase 2 – EBRC completion (2023-25)	\$440M		Under review	Does not meet minimum operations criteria until well after 2025
Phase 2 sub-total	-	\$453M		Plus \$2-3M per year in new operational costs
Project total	-	\$599M		Costs almost \$250 million/mile

*Data from VTA CPC Agenda Packet item #7, pages 36 and 37, dated March 28, 2019 and updates presented in the Board of Directors meeting on April 4, 2019.

The VTA Board has considered various aspects of the Eastridge project more than 20 times since 2000. Each time, the Board has made a decision that allowed work on the project to continue, often kicking the ultimate decision on the fate of the project down the road by noting that its current decision was not the final word on the project and that there would be opportunity for further consideration of the project and final approval at a future date.

For example, at its meeting on May 3, 2018, the Board considered the viability of the light rail extension to Eastridge. After a lengthy discussion, the Board approved a funding strategy for proceeding with the project, but the Chairperson noted that there would be still more decision points at which the project could again be considered by both the CPC and the full Board. At the same time, the Board approved a resolution authorizing a staff study of alternatives to light rail for the Eastridge extension. VTA staff has confirmed that, a year later, this study still has not been completed.

At the March 28, 2019 meeting of the CPC (at which the Committee agreed that the Vasona Junction extension should be put on hold), Phase 2 of the Eastridge project was again considered. At the meeting, the Mayor of San José, serving as Chairperson of the Committee, asked the following question, “Is the current light rail system one we want to continue to invest in? Our ridership is challenged. Our cost-effectiveness system-wide is 10% on farebox return [it is actually less than 10%]. That 10% is already among the very lowest in the nation in terms of farebox

return, and light rail actually hurts us. The question is: what does the process look like for us to be re-evaluating the entire system to see if we want to start thinking differently about the entire light rail system? *I hate to think we are doubling down on a failed system.*” Another committee member echoed that sentiment, noting, “We have to choose our transportation modes in a cost-effective and efficient manner. *I support to do additional evaluation of what is needed for that corridor. The train has not left the station on Eastridge.*” Yet, after a lengthy discussion about an overall re-evaluation of light rail before proceeding with the Eastridge extension, no concrete action was taken in that direction, and both of these directors joined with a third to support a motion to move forward with the project and kick the ultimate decision down the road yet again. The vote was three to two in favor of the motion, but it failed for lack of the required four aye votes needed to pass.

The fate of the Eastridge extension project is now once again in the hands of the VTA Board, and its final resolution will be a test of the Board’s leadership. The issue will be considered by the Board again at its meeting on June 6, 2019. Although the subject of the extension was not on the agenda at the Board’s May meeting, the Mayor of San José signaled his intentions. Despite the comments he made at the March CPC meeting, the Mayor stated, “I will vote to proceed immediately with the construction of the Eastridge transit project when it comes before the VTA Board in June. I expect we will move forward without delay.” The investigation of the Grand Jury report was completed on May 29, 2019, and this report does not reflect any actions taken at the June 6, 2019 meeting.

As pointed out above, the remaining capital cost to complete the 2.4-mile extension is currently estimated at \$453 million, or almost \$189 million per mile. According to most recent staff projections included in the May 2019 EBRC Supplemental Environmental Impact Report (SEIR), the new light rail extension would attract approximately 611¹¹ new riders (net of a reduction in bus ridership on the existing bus lines that run parallel to the proposed rail extension) by 2025. Therefore, the additional capital cost would be equal to approximately \$720,000 for each new rider in the first year of service. Once completed, the Eastridge extension would become part of an outmoded light rail system that is one of the most expensive and heavily subsidized LRT systems in the country, with declining ridership and operating costs more than double the cost of bus operations. The extension, upon completion, is projected to have a miniscule impact on transit usage in the East San José/Milpitas corridor over the next 24 years (i.e., an increase of only 0.07% by 2043 and just over half that when service begins).¹² Moreover, the current design permanently *removes* two existing high occupancy vehicle (HOV) lanes from the Capitol Expressway, without any foreseeable commensurate reduction in automobile traffic, a fact that may not be widely

¹¹ EBRC SEIR, May 2019, page 71, Table 5.1-11. [http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20\(1\).pdf](http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20(1).pdf)

¹² EBRC SEIR, May 2019, page 72

understood in the East San José community. As noted in the SEIR, “[t]he proposed removal of the HOV lanes would result in higher average automobile delays and higher automobile travel times on Capitol Expressway.”¹³ Further, despite claims that the Eastridge Transit Center is among the busiest in the VTA system, there is an average of only seven riders per bus trip into and out of that center.

Based on our interviews, the Grand Jury has found virtually no support for the project among the VTA staff, although they continue to move the project forward in compliance with incremental policy decisions made by the VTA Board.

The argument supporting the Eastridge extension is essentially political. The extension was one of 13 transportation improvement projects envisioned by Measure A and passed by the voters in 2000. For various reasons, most related to budget challenges brought about by the dot com “bubble” in the early 2000s and the later economic recession, the implementation of the Eastridge project has been delayed, along with some of the other Measure A projects. In the interim, the once-promising LRT system has become technically outmoded and increasingly expensive.

Yet, proponents of the extension, including powerful political forces, contend that the periodic, incremental approvals of the project by the VTA Board that have kept the project alive over the years have reinforced a “promise” to complete it, even though the VTA Board has both the right and the duty to re-evaluate capital projects when they are no longer viable. Proponents also contend that completion of the project is a matter of “economic equity,” balancing the needs of a relatively low-income, transit-dependent area of Santa Clara County with the type of transit services provided elsewhere in the County (although, as noted above, the Vasona Junction project that was to have served the Los Gatos area was recently put on hold).

The challenge to the VTA Board, in the exercise of its fiduciary duties to the taxpayers and transit users of the County, is to address such questions as:

- Can *any* further investment in VTA’s present LRT system be justified, much less one that will cost \$720,000 for each prospective new rider?
- Does the proposed Eastridge extension meet VTA’s standards for new transit projects, including minimum projected ridership criteria?
- Before proceeding with the project, should the Board undertake a thorough review of the light rail system and its future as a mode of transportation in Silicon Valley, as suggested by members of the CPC?

¹³ Ibid, page 72

- Can the recognized needs of the residents of East San José for modern, efficient public transportation be better served by an alternative to the proposed Eastridge light rail extension?

VTA should aspire to take an industry-leading role in the future of public transportation, commensurate with the role of Silicon Valley as a worldwide leader in technology and innovation. Whether the VTA Board is able to put aside local political considerations and answer these questions based on the interests of all the taxpayers and residents of Silicon Valley will say much about its effectiveness as a policy-making body and whether VTA will be able to achieve such leadership aspirations.

Designing a More Effective Structure for the VTA

There are countless variations in models for governing a regional transit agency, and there is no perfect structure that fits all situations. Even when transit agencies set out to reorganize their own governance structure in response to acknowledged defects, they realize they must choose among alternative structures having both advantages and disadvantages.

Virtually all the individuals interviewed by the Grand Jury, including directors and senior staff, agreed that VTA could benefit from a more knowledgeable and engaged Board of Directors that is more sharply focused on VTA's role as a regional transit agency and less on local political interests. However, there is less consensus on how best to achieve that goal. Nevertheless, it is useful to examine some of the variable features of alternative governance structures, how they have been implemented by other transit agencies and how changes to the structure of VTA's governance might result in a more effective Board.

Number of Directors

The VTA Board has 12 voting members. As pointed out in the 2003-2004 Grand Jury's report, the VTA Board is larger than the boards of many regional transit agencies. Alameda County Transit (AC Transit) and BART, for example, have boards of seven and nine members, respectively, while two other transit agencies in California have five-person boards. However, transit agency boards across the country range widely in size, from as few as five to more than 20. The agency serving Dallas/Fort Worth, for example, has a 15-person board, while the Phoenix and Salt Lake City transit agencies each has a 16-member board. The 2003-2004 Grand Jury Report concluded that a smaller Board, of five to seven members, "would be more involved in and accountable for the financial and operational management of VTA." Some current members of the VTA Board agree that a smaller Board would be preferable, although others disagree. While the current Grand Jury agrees that reducing the size of the Board might result in more focused decision-making, a reduction in Board size, in and of itself, would not address fundamental issues of lack of experience, inadequate continuity, competing time commitments and conflicts of interest between VTA and local priorities. Accordingly, a reduction in the size of the VTA Board should only be considered in conjunction with other structural changes that directly address these key issues.

Term of Service

VTA directors serve for terms of two years. Although some directors serve more than one term (often consecutive), directors whose positions rotate among groups of smaller cities generally do not serve consecutive terms. Furthermore, a director's term can be cut short if the director ceases to serve in his or her elected position.

The term of service for directors of regional transit agencies in California and other larger metropolitan areas generally ranges between two and four years, with three and four-year terms being common. In California, for example, directors of BART, AC Transit and transit agencies serving Santa Barbara, Stockton and Bakersfield serve four-year terms. Directors of agencies serving Austin and Vancouver, B.C. serve for three years. In an independent review of the agency serving Vancouver, a Governance Review Panel concluded that “longer-term decision-making requires a minimum of three-year terms,” although the panel also recommended that members not be allowed to serve more than six consecutive years in order to vary the “mix of management, finance, legal and other skills to match [the agency’s] changing needs over time.”¹⁴

Among the individuals interviewed, there was substantial support for longer terms to provide additional time for directors to become knowledgeable about VTA’s operations and transit issues, to participate in more than one budget cycle and to participate more effectively in the Board’s long-term planning function. In addition, lengthening the term of service would mitigate the advantage currently enjoyed by representatives of San José and Santa Clara County, who typically serve substantially longer terms than the representatives of the smaller city groups and dominate the Board, in part, as a result of their greater experience. Not all interviewees agreed, however. One made the point that, if a director is unqualified in the first place, a four-year term would just mean that the Board would be burdened with an unqualified member for twice as long. Additionally, since under the current structure a director’s term ends when he or she leaves elected office, a four-year term is more likely than a two-year term to be cut short, lessening to some degree the impact of a change to a longer term. Nevertheless, extending the term of VTA directors to four years would increase the average term of Board service and, accordingly, would provide some valuable experience and continuity to the Board and enhance the influence of the smaller cities. Likewise, establishing term limits or limits on total years of service would mitigate the dominance of San José and the County and allow the Board to evolve over time to meet its changing needs.

As described above, the PUC specifies the annual election of the Board’s Chairperson and Vice Chairperson. The VTA Administrative Code provides that the election of the two officers shall be conducted at the last meeting of the calendar year, when practical, and that they shall serve for the ensuing calendar year.¹⁵ The Administrative Code also specifies that the two positions shall be rotated annually, according to a fixed schedule, among representatives of San José, Santa Clara County and the smaller city groups¹⁶.

There was considerable support among the persons interviewed for extending the Chairperson’s term from one to two years. As pointed out above, because VTA operates on a June 30 fiscal year,

¹⁴ “TransLink Governance Review”, TransLinK Governance Review Panel, January 26, 2007, page 22

¹⁵ VTA Administrative Code Section 2-26

¹⁶ Ibid

the Chairperson's calendar year term of service straddles two fiscal years, disconnecting the Chairperson from the budget process and accountability for operating and financial results. He or she inherits one annual budget in mid-stream and serves only halfway through another. Lengthening the Chairperson's term would help address this problem by allowing the Chairperson to oversee VTA's financial performance for at least one full fiscal year. Coordinating the term of the Chairperson with the agency's June 30 fiscal year would further connect the Chairperson with VTA's budget process and the oversight of its financial performance. Similarly, reviewing the VTA General Manager's performance on a fiscal year rather than a calendar year basis would also improve direct accountability for the organization's performance to budget.

Direct Election of Directors

Under the current governance structure, members of the VTA Board are appointed to serve by the jurisdictions they represent, either through direct appointment by a mayor or city council or, in the case of the groups of smaller cities, by arrangement among the cities. As pointed out above, as originally proposed by the County Board of Supervisors, the VTA Board would have been composed of a combination of five directly elected members and 11 appointed members.

Although the direct election of directors of transit agencies is not common in California, there are exceptions, including BART and AC Transit, both of which have directly elected directors serving four-year terms. Other regional public bodies use a direct election model for some or all their directors. The Santa Clara Valley Water District (SCVWD), for example, has a board of seven directors, directly elected by supervisorial district.

Benefits of an elected board include direct accountability to the public and the directors' increased focus on the affairs of the agency as their primary, rather than secondary, public service responsibility. Direct election would also eliminate the possibility of directors' terms being shortened when they cease to serve in their elected position. In theory at least, candidates who serve on an elected board also would be more likely to have an interest in and commitment to public transportation issues than would appointed directors. On the other hand, directly elected VTA Board members, like other elected officials, may tend to have a parochial view if they are elected to represent specific districts or municipalities, so the goal of encouraging a regional view of strategic planning responsibilities might not be fully realized.

Some interviewees supported changing to a direct election model for the VTA Board, based on the potential benefits noted above. Others, however, did not favor such a change. Several pointed out what they perceived to be a lack of effectiveness of the BART Board of Directors as evidence that the change would not be worthwhile. Others noted that moving to a direct election model would be complicated, politically difficult and costly – again, not justifying the change. One interviewee observed that, at the end of the day, voters pay very little attention to the direct election of directors

of governmental agencies, noting that many voters do not even know that an agency like SCVWD, for example, even exists, much less who its directors are.

Appointed Directors Who Are Not Elected Officials

Like VTA, many regional transit districts have boards consisting exclusively of elected officials representing the constituent communities making up the district. In at least three California transit agencies (those serving Santa Barbara, San Francisco and Stockton), the appointed boards of directors include interested citizens who are not currently serving as elected officials, and the enabling legislation of another transit district, serving the Bakersfield area, specifically provides that elected officials are *not* eligible for appointment as members of the Board. Transit agencies whose directors are not current elected officials are not uncommon in other parts of the country. Examples of transit agencies with appointed boards that do not include elected public officials are those serving Houston, Austin, Vancouver, B.C. and Toronto.

The flexibility to appoint non-politicians to serve on the board of a transit agency allows the appointing authority to select directors having a wide range of business, financial and transportation-related experience with a mandate to serve non-politically and make evidence-driven policy decisions based on demonstrated need and financial feasibility. The Houston Metropolitan Transit Authority (HMTA), for example, has a board of nine members, five of whom are appointed by the Mayor of Houston, two by the Harris County Commissioners Court and two by the mayors of other cities in its service area. The Board of the HMTA currently includes a retired lawyer, a certified public accountant, a banker, executives of large companies and experts on infrastructure, construction and budget management.

Partially offsetting the benefits of removing elected public officials from a transit agency's governance structure are concerns of accountability. The level of commitment of non-elected directors to their local communities' views on transit policy and priorities, including land use and development, is uncertain. However, some senior VTA staff and directors feel that the staff gets little support from VTA Board members in connection with VTA's dealings with city governments on these issues.

Some transit districts have chosen to balance the benefits of a predominantly non-political governing board with some participation by elected officials. For example, the board structure of the transit agency serving the Austin area was revised in 2011 from 100% elected officials to a mix of two elected officials and five non-politicians, with the City of Austin, the largest participant and underwriter of the system, having a predominant say in the appointments. The enabling legislation went a step further and specified that one appointed member of the board must have at least 10 years of experience as a financial or accounting professional and another must have at

least 10 years of experience in an executive-level position in a public or private organization.¹⁷ As one commentator noted at the time the legislation was proposed, “What the board would lose in elected officials, it would presumably gain in knowledge.”¹⁸

In 2011, the Legislative Auditor of the State of Minnesota issued an evaluation report that analyzed various governance structures for the agency principally responsible for the Twin Cities’ transit system, as potential alternatives to the existing structure under which all members of the governing council are appointed by the governor. After analyzing and comparing various structures, including the existing appointment system and the direct election of council members, the Auditor concluded that the optimal model would be a combination of appointed and elected officials that “would provide the Council with an effective mix of regional and local perspectives.”¹⁹

Silicon Valley offers an unparalleled pool of talented individuals, including entrepreneurs who have introduced cutting-edge technologies, products and services, as well as countless experts with leadership experience in finance and executive management of large organizations. Current and retired leaders of Silicon Valley companies and organizations have made numerous contributions in support of a wide range of community activities, including the arts, healthcare, education and other civic and charitable endeavors. Surely, appointing authorities could identify qualified public sector leaders who would be willing to serve on the VTA Board, and VTA would benefit from their knowledge and experience.

¹⁷ Texas Transportation Code Section 451.5021(b)

¹⁸ "What's Wrong With Cap Metro...and What's Right", Lee Nichols, Austin Chronicle, April 24, 2009

¹⁹ "Governance of Transit in the Twin Cities Region", Office of the Legislative Auditor, January 2011, page 44

CONCLUSIONS

VTA is a complex, multi-billion-dollar enterprise. In addition to operating a large transit system, VTA has responsibility for county-wide transportation planning, including congestion management, the design and development of highway, pedestrian and bicycle improvement projects and the promotion of transit-oriented development.

VTA is governed by a part-time Board of Directors composed solely of elected public officials, each of whom is burdened by the obligations of his or her office and subject to local political interests. A few of the directors have served for many years, but others have served for less than two. Appointees to the VTA Board often have little or no previous experience with transportation, finance or leadership of a large organization, let alone one the size of VTA.

Today, VTA faces a series of challenges which, taken together, can be fairly characterized as a crisis. The following challenges, among others, must be addressed by the VTA Board:

- Year after year, VTA operates one of the most expensive and least efficient transit systems in the country. Empty or near-empty buses and light rail trains clog the County's streets but are used regularly by fewer than 5% of the County's commuters. Operating costs increase continuously, and taxpayers subsidize 90% of these costs, to the tune of about \$5.50 per rider for each bus trip and \$10.75 per rider for each light rail trip.
- VTA veers from one financial crisis to another. In June 2017, the VTA Board adopted the 2018-2019 biennial budget and consciously approved a built-in structural financial deficit of \$50 to \$60 million per year. In January 2018, an ad hoc committee of the VTA Board was formed to deal with the crisis caused by the budget deficit. In August 2018, VTA's Chief Financial Officer advised the committee that the agency was 18 to 24 months away from going "off a cliff." At the end of 2018, the ad hoc committee made weak and only partially effective recommendations to address VTA's structural financial deficit and didn't seriously consider such important but politically sensitive topics as reductions in employee headcount or the scrapping or deferral of large capital projects.
- Light rail ridership is declining steadily throughout the country. Experts have pronounced the early twentieth century concept of light rail transit obsolete, and other regional transit agencies are contemplating abandoning light rail system extensions. VTA, however, continues to move forward with an extension of its light rail system — one that currently has among the highest operating costs and lowest ridership in the country. The remaining capital cost of the proposed 2.4-mile Eastridge extension project is currently estimated at \$440 million, representing approximately *\$720,000 for each new rider* that the staff estimates will actually use the extension during the first year of its operation. The project

makes no financial sense and survives only because powerful political forces continue to support it. VTA needs to carefully consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be met without “doubling down on a failed system,” as one director put it, and worsening VTA’s precarious financial condition.

- Although a detailed review of the long-pending BART to Silicon Valley project was beyond the scope of the Grand Jury’s inquiry, a number of our interviewees, including senior VTA staff and members of the VTA Board, noted its importance to the future of VTA. VTA’s proposed fiscal years 2020-2021 capital budget calls for a staggering \$713.5 million in Measure A and Measure B tax funds for the BART Phase 2 project. The operating agreement between VTA and BART remains in negotiation, and several of our interviewees expressed concern that important issues regarding the sharing of system-wide capital and operating costs remain unresolved and that such costs could fall disproportionately on VTA. One director expressed the opinion that BART-related cost control issues are more significant for VTA than those related to the Eastridge light rail extension. A senior staff member stated unequivocally that “BART is going to bankrupt VTA.” An interested stakeholder similarly predicted that BART “will be the demise of VTA.” Whether or not these assessments are accurate, it is clear that the financial health of VTA is dependent on the success of BART in the South Bay Area. That success is dependent, in turn, on VTA effectively implementing BART Phase 2 and meeting its ridership and revenue goals.

VTA’s operating territory is the Silicon Valley – the world’s leading center of innovation and cutting-edge technology. Several of VTA’s key staff members have noted that they had joined VTA in the hope that VTA would take an industry-leading role in the future of transportation, commensurate with the role that companies and other institutions in the Silicon Valley have taken in the introduction of all manner of new products, technologies and services. Yet, little such innovation has been evident at VTA in recent years. In fact, as noted above, VTA seems to be “doubling down” on old technology. At the Board’s recent workshop on “The Future of Transportation in Silicon Valley,” the directors present (two-thirds of the voting members and half of the alternates) seemed to recognize this problem and unanimously agreed that VTA needs to make “radical changes” in the way it provides its services.

If VTA is going to meet the many challenges it faces, the VTA Board will have to make good on its commitment to radical change. So, the question becomes, is the Board capable of making the policy decisions and providing the strategic oversight necessary to accomplish such change? The Grand Jury has concluded that, as presently structured and operated, that level of capability does not appear to be present. Accordingly, the Grand Jury recommends a number of changes in the structure of the VTA Board and in the way directors are selected, trained and evaluated that it

believes will assist VTA in addressing its many challenges and achieving its aspiration of becoming a leader in the transportation industry.

FINDINGS AND RECOMMENDATIONS

Finding 1

The VTA Board, currently made up exclusively of elected officials from the Santa Clara County, Board of Supervisors, the City of San José and the other smaller cities in the County, suffers from:

- A lack of experience, continuity and leadership;
- Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions;
- A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;
- Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José; and
- Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Recommendation 1a

VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Recommendation 1b

As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.

Recommendation 1c

As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Recommendation 1d

Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Recommendation 1e

In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Recommendation 1f

Prior to December 31, 2019 and pending changes contemplated by Recommendation 1e, VTA should adopt a policy of routinely reappointing an incumbent Chairperson for a second one-year term at the end of his or her initial term, absent unusual circumstances.

Recommendation 1g

In order to better connect the Chairperson with the budget process and accountability for operating and financial results, prior to December 31, 2019, VTA should amend Section 2-26 of the VTA Administrative Code to provide that the Chairperson and Vice Chairperson shall serve terms coinciding with VTA's fiscal year ending June 30, rather than the calendar year.

Finding 2

The California Public Utilities Code, the VTA Administrative Code and the Guidelines for Member Agency Appointments to the VTA Board of Directors adopted by the Governance and Audit Committee of the Board (Guidelines) all contain provisions requiring that, to the extent possible, the appointing agencies shall appoint individuals to the VTA Board who have expertise, experience or knowledge relative to transportation issues. Nevertheless, appointees to the VTA Board often lack a basic understanding of VTA's operations and transportation issues, generally.

Recommendation 2

In order to help assure that individuals appointed to serve on the VTA Board have the appropriate qualifications, prior to December 31, 2019, VTA should take vigorous action to enforce compliance by appointing agencies with the qualification and suitability requirements of: (i) Section 100060(c) of the California Public Utilities Code; (ii) Section 2-14 of the VTA Administrative Code; and (iii) the Guidelines.

Finding 3

The VTA Board lacks effective policies designed to assure productive participation by members of the VTA Board.

Recommendation 3a

In order to help make directors become and remain productive members of the VTA Board, prior to December 31, 2019, VTA should: (i) implement and enforce attendance at an intensive, multi-session onboarding bootcamp for incoming directors that would provide detailed information regarding VTA's operations, financial affairs and currently pending large-scale projects as well as the organization and operations of the Board and directors' duties and obligations; (ii) prepare and provide to each director a detailed handbook of directors' duties, similar to the "Transit Board Member Handbook" published by the American Public Transportation Association; (iii) enforce attendance at Board and committee meetings by providing Board attendance records to appointing agencies and removing directors from committees for repeated non-attendance; and (iv) implement a robust director evaluation process, with the participation of an experienced board consultant, that would include mandatory completion by each director of an annual self-evaluation questionnaire and Board review of a composite report summarizing the questionnaire responses.

Recommendation 3b

In order to further enhance the effectiveness of the directors, prior to December 31, 2019, VTA should develop a program to encourage continuing education of the Board members by: (i) scheduling and enforcing attendance at more frequent and intensive Board workshops on important issues regarding transit policy, developments in transportation technology, major capital projects and VTA's financial management; and (ii) requiring directors to attend, at VTA's expense, third-party sponsored industry conferences and educational seminars.

Finding 4

The Grand Jury commends the Chairperson of the VTA Board for recognizing the need to improve Board engagement and effectiveness by convening the Ad Hoc Board Enhancement Committee to review the Board's governance structure and practices.

Recommendation 4

None.

Finding 5

VTA continues to consider an extension of VTA's light rail system to the Eastridge Transit Center, at an additional capital cost of over \$450 million, although VTA's light rail system is one of the most expensive, heavily subsidized and least used light rail systems in the country, many transit experts consider light rail obsolete, and VTA is suffering from chronic structural deficits that would be exacerbated by the continuation of the project as currently defined.

Recommendation 5a

VTA should consider following recommendations made by several directors that it undertake a thorough review of VTA's light rail system and its future role as a mode of transportation in Silicon Valley before proceeding with the Eastridge extension project. This review, as it pertains specifically to the analysis of the viability of the Eastridge extension, should be undertaken with the participation of an independent consultant and should consider such issues as projected ridership estimates, project cost estimates including future operating and capital costs, and the projected impact on traffic congestion on Capitol Expressway with the removal of two HOV lanes.

Recommendation 5b

VTA should consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be better served by an alternative to the proposed light rail extension.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

Responding Agency	Finding	Recommendation
Santa Clara Valley Transportation Authority	1, 2, 3, 4 and 5	1a, 1f, 1g, 2, 3a, 3b, 5a and 5b
County of Santa Clara	1	1b, 1d and 1e
City of Campbell	1	1c, 1d and 1e
City of Cupertino	1	1c, 1d and 1e
City of Gilroy	1	1c, 1d and 1e
City of Los Altos	1	1c, 1d and 1e
City of Milpitas	1	1c, 1d and 1e
City of Monte Sereno	1	1c, 1d and 1e
City of Morgan Hill	1	1c, 1d and 1e
City of Mountain View	1	1c, 1d and 1e
City of Palo Alto	1	1c, 1d and 1e
City of Santa Clara	1	1c, 1d and 1e
City of San José	1	1c, 1d and 1e
City of Saratoga	1	1c, 1d and 1e
City of Sunnyvale	1	1c, 1d and 1e
Town of Los Altos Hills	1	1c, 1d and 1e
Town of Los Gatos	1	1c, 1d and 1e

APPENDIX A – The Guidelines for Member Agency Appointments to the VTA Board of Directors



7.a

Santa Clara Valley Transportation Authority (VTA)

Guidelines for Member Agency Appointments to the VTA Board of Directors

The following information and suggestions are provided to assist local jurisdictions with appointing qualified, engaged and capable representatives to the VTA Board of Directors.

Overview of VTA

VTA is an independent special district responsible for bus, light rail and paratransit operations; congestion management; specific highway improvement projects; countywide transportation planning; and voter-approved local sales tax programs, including the 2000 Measure A Transit Improvement Program. As such, VTA is both an accessible transit provider and multi-modal transportation planning and implementing organization involved with transit, highways and roadways, bikeways, and pedestrian facilities.

VTA is governed by its own Board of Directors representing all jurisdictions within Santa Clara County. Eligible Board members are elected city councilmembers or county supervisors who may serve during their term of office.

The VTA Board of Directors consists of 12 voting members, 6 alternates, and 3 ex-officio members, and membership attempts to balance regional representation and population. Board members are appointed as follows:

- **GROUP 1: (San José)** – 5 voting members and 1 alternate
City of San José
- **GROUP 2: (Northwest)** – 1 voting member and 1 alternate
City of Los Altos; Town of Los Altos Hills; City of Mountain View; City of Palo Alto
- **GROUP 3: (West Valley)** – 1 voting member and 1 alternate
City of Campbell; City of Cupertino; Town of Los Gatos; City of Monte Sereno; City of Saratoga
- **GROUP 4 (South County)** – 1 voting member and 1 alternate
City of Gilroy; City of Morgan Hill
- **GROUP 5 (Northeast)** – 2 voting members and 1 alternate
City of Milpitas; City of Santa Clara ; City of Sunnyvale
- **GROUP 6 (County of Santa Clara)** – 2 voting members and 1 alternate
County of Santa Clara
- **Ex-Officio** - Santa Clara County's three Metropolitan Transportation Commission members

It is important to note that other than the Ex-Officio members, the above groups are responsible to appoint their representative(s) in a manner they themselves determine.

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Key information about the Board of Directors

- Generally meets the first Thursday of each month (July meeting is normally cancelled) at the County of Santa Clara Government Center (70 W. Hedding Street, San Jose)
- Meetings begin at 5:30 PM and normally last one to three hours, depending on the agenda.
- A small number of Board workshops or study sessions are typically held during the year. These are normally scheduled for a time other than the regular Board meeting.
- Directors serve on one or more Board standing committees. Most standing committees meet monthly, while others meet bi-monthly or quarterly. Standing committees meet at varying times during the normal work day, and most standing committee meetings are conducted at VTA's River Oaks Administrative Complex.
- Appointments are for two years, commencing on January 1 and ending on December 31 of the following year. Members and alternates may be appointed to successive terms.
- Members of the VTA Board of Directors are not eligible to concurrently serve on VTA's Policy Advisory Committee (PAC), although Board alternates may be appointed to the PAC.
- It is the responsibility of each member jurisdiction to seek agreement with the other members on any proposed appointment of an individual to represent that city/county group on the VTA Board of Directors.

Expectations

Board members:

- Should be able to devote, on average, 5 - 10 hours per month, which includes Board and standing committee meetings as well as time to review agenda materials.
- Represent the interests of their city/county group while endeavoring to achieve regional consensus.
- Have a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction.
- Should be able to work cooperatively in a multi-jurisdictional setting.
- Should be able to attend Board and standing committee meetings consistently.
- Are responsible for keeping their respective jurisdictions informed of key issues, facilitating communication between those entities and VTA, and helping build consensus.

Suggested Guidelines for Board of Director Appointments

The following is offered for Member Agency consideration when appointing representatives to the VTA Board of Directors. They are suggestions only, not requirements. It is each appointing jurisdiction's prerogative to appoint its representative of choice, provided that individual meets VTA's pre-established membership requirements for the position.

When evaluating prospective appointees to the Board of Directors, you are strongly encouraged to give consideration to the following factors and attributes in determining your appointee:

- Consideration should be given to appointing a member based on the value and expertise they can provide to improving transportation and mobility within the county.
- Individual should have experience or interest in transportation.
- Consideration should be given to appointing a member who has sufficient remaining time in their term to allow full completion of their term on the VTA Board of Directors.
- Consideration should be given to reappointing members to consecutive terms.
- Prior service on the VTA Board of Directors or Policy Advisory Committee is advantageous.
- Previous service on a planning or land use commission is beneficial.
- Due to the institutional learning curve and the complexity and long-term regional effects of the policy decisions, consideration should be given to appointing members who demonstrate strength in these areas.
- It is important that appointees have sufficient available time to appropriately discharge their VTA Board of Directors duties and responsibilities.
- Individuals should be able to facilitate communication by appropriately representing the positions and concerns of their governing body while keeping that same body apprised of key VTA initiatives and issues.

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APPENDIX B – VTA Operating Statistics and 2017 National Trends

This appendix presents operational metrics comparing VTA against national trends using an FTA annual summary.

Table B1 VTA Operating Statistics 2009 - 2018

Year	County Population ¹ (millions)	Bus Ridership ¹	Light Rail Ridership ¹	VTA Operations Full-Time Employees ¹	Fleet Size ^{1& 2}	VTA Operations Expense (\$) ¹	Vehicle Revenue Hours ^{3&4}	Total Unlinked Passenger Trips ^{3&4}
2009	1.77	34,510,273	10,754,161	1649	547	254,285,943	1,487,469	45,264,434
2010	1.79	31,983,494	9,749,882	1588	523	257,953,581	1,406,463	41,733,376
2011	1.814	31,395,126	10,014,504	1576	593	263,322,297	1,357,169	41,409,630
2012	1.841	32,053,755	10,373,042	1599	544	278,532,013	1,383,007	42,426,797
2013	1.87	32,432,354	10,742,292	1614	542	293,447,169	1,411,180	43,174,646
2014	1.894	32,475,527	10,952,965	1687	542	311,287,342	1,464,798	43,428,492
2015	1.92	32,623,599	11,320,497	1724	639	319,978,046	1,524,011	43,944,096
2016	1.934	32,195,504	10,722,932	1758	599	335,140,300	1,555,226	42,918,436
2017	1.946	29,057,047	9,132,084	1761	559	354,494,193	1,569,744	38,189,131
2018	1.957	28,048,405	8,507,095	1795	571	414,975,000	1,582,146	36,555,500

Notes:

1. From VTA report "Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018" listed in References, item number 15, and State Department of Finance

<http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-2/documents/PressReleaseJul2018.pdf>

2. Fleet size includes the total number of buses and light rail cars

3. Vehicle Revenue Hours (VHR) and Unlinked Passenger Trips (UPT) data from FTA NTD

<https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0>

4. Operating expense, UPTs and VHRs include only directly operated bus and light rail vehicles

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

For the charts below, the Grand Jury used data from the 'National Transit Summaries & Trends 2017'²⁰, "Santa Clara Valley Transit Authority Annual Agency Profile 2017"²¹, and "Service Data and Operating Expenses Time-Series by System"²² to examine VTA's operations and performance in the national arena.



²⁰ 2017 National Transit Summaries and Trends

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/ntd/130636/2017-national-transit-summaries-and-trends.pdf>

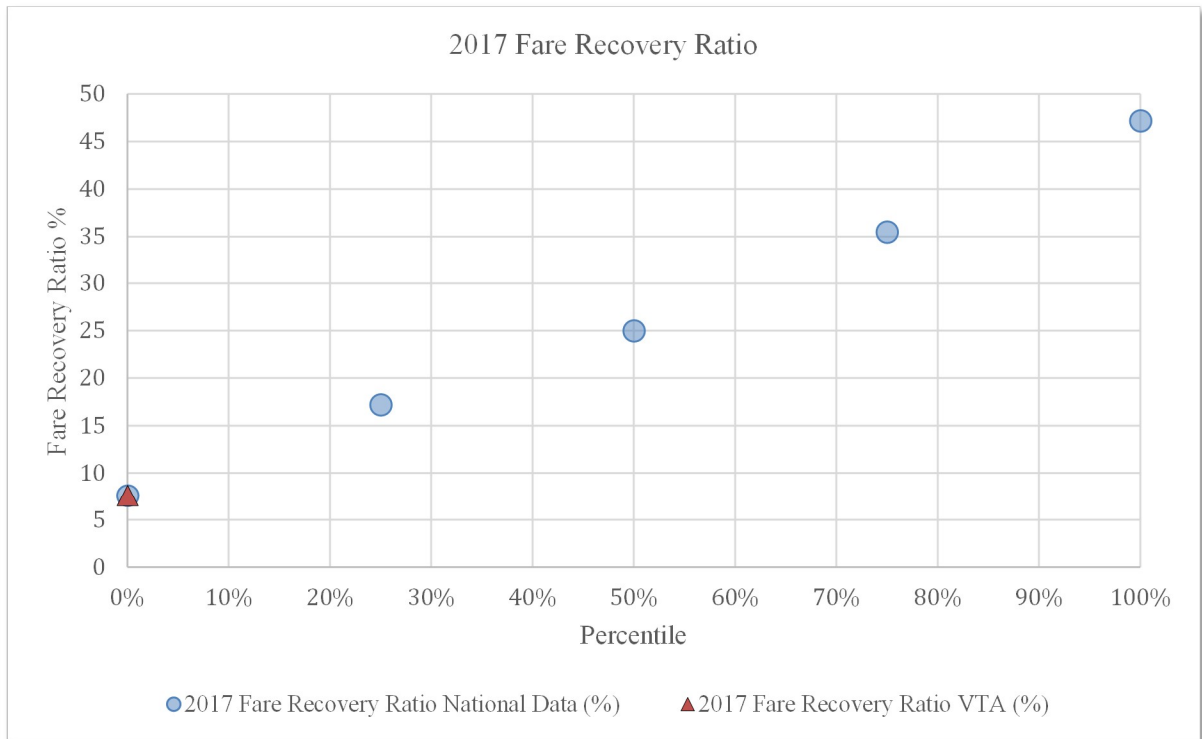
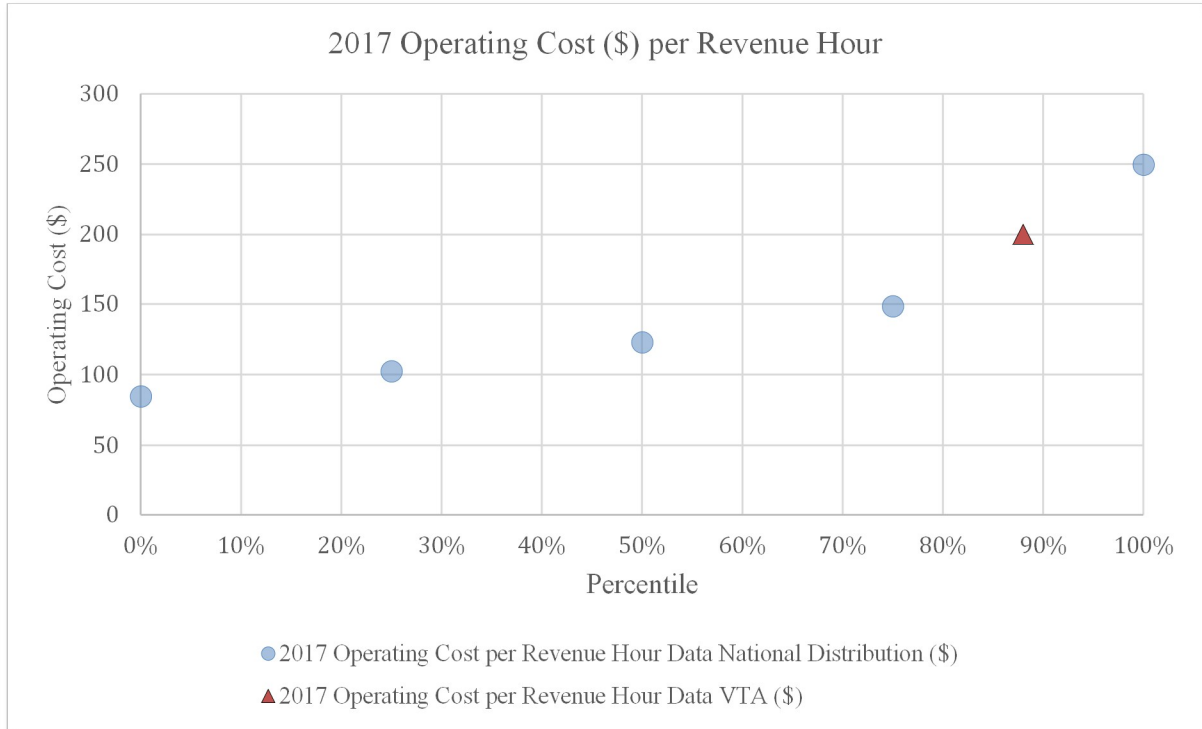
²¹ Santa Clara Valley Transit Authority Annual Agency Profile 2017

<https://www.transit.dot.gov/ntd/transit-agency-profiles/santa-clara-valley-transportation-authority>

²² Service Data and Operating Expenses Time-Series by System

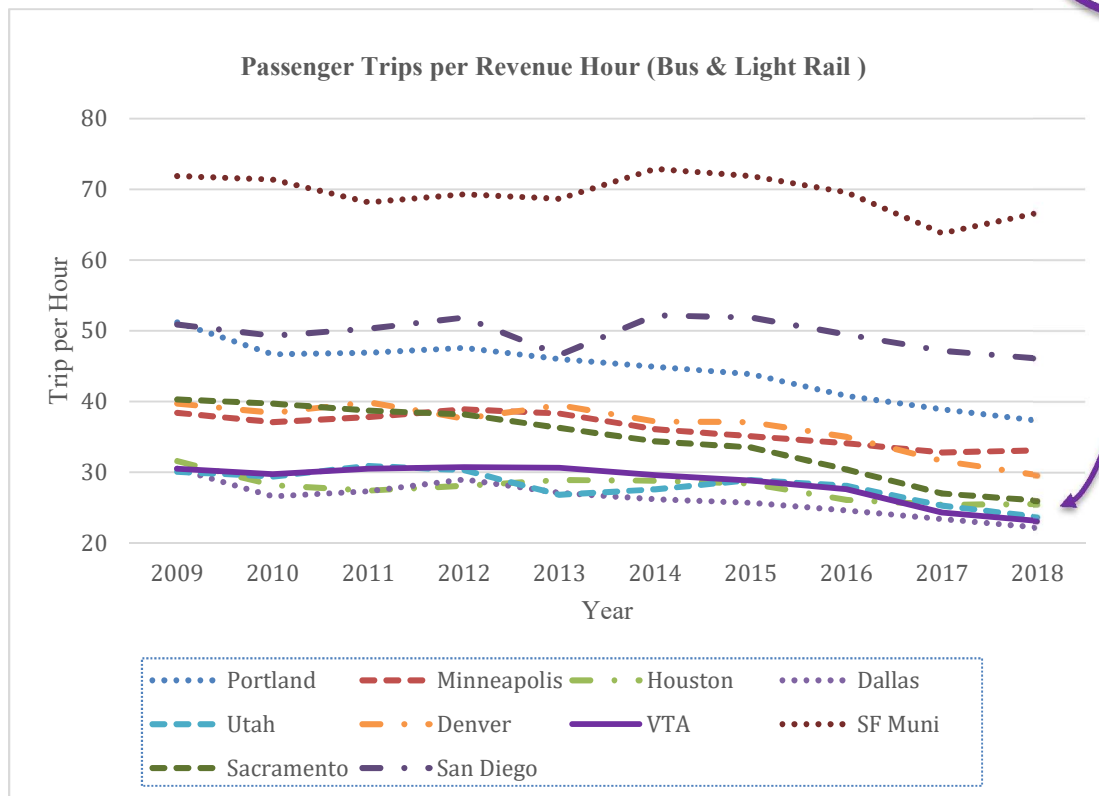
<https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0>

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APPENDIX C – Peer Agency Comparisons

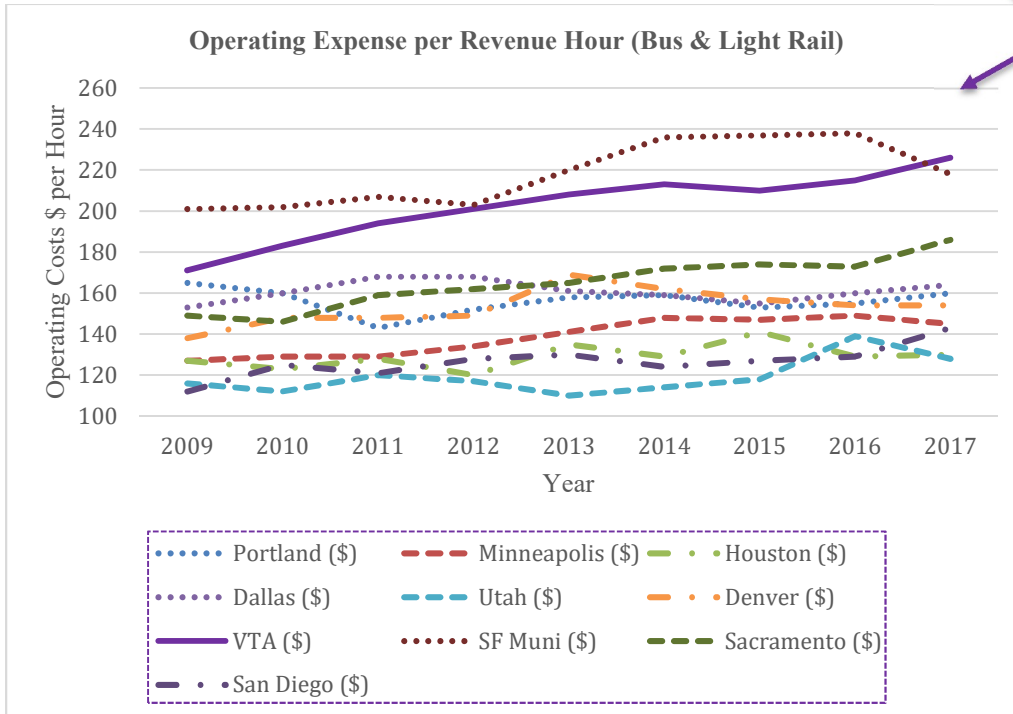
This appendix presents various operational metrics for VTA and nine peer agencies. Generally, VTA under-performs all or most of these agencies as noted.



Source of data: <https://www.transit.dot.gov/sites/fta.dot.gov/files/February%202019%20Adjusted%20Database.xlsx>

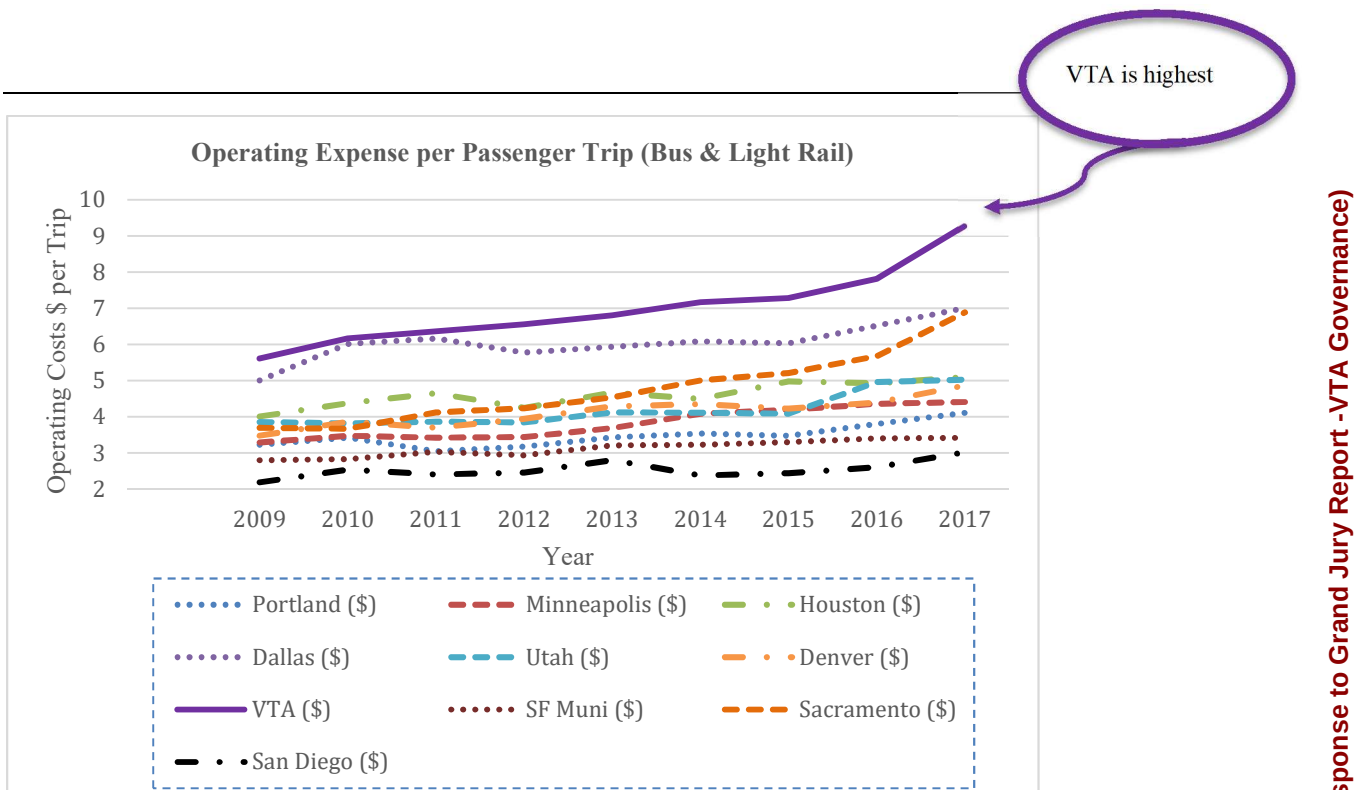
VTA competes for lowest

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



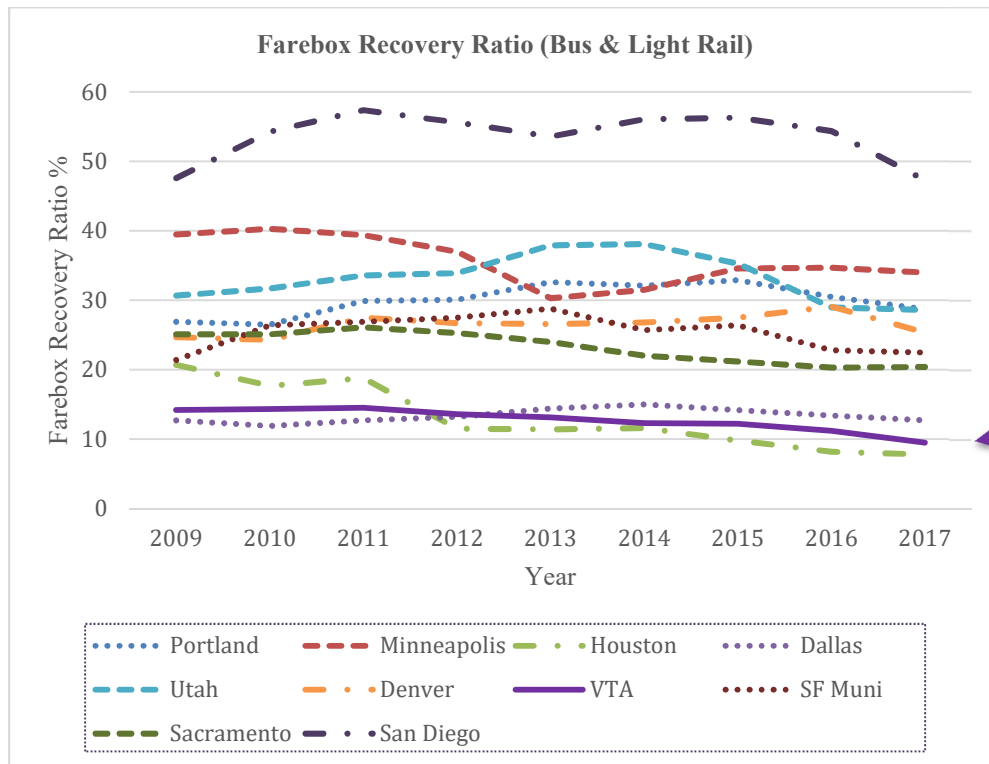
Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

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Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

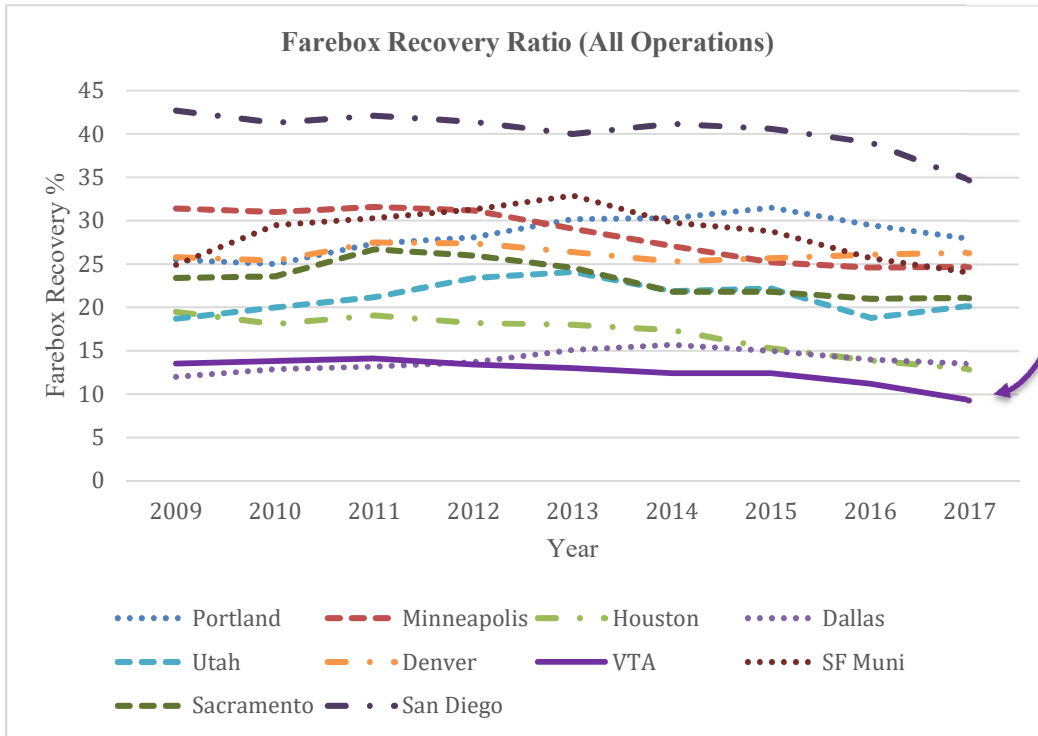
INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



VTA competes for lowest

Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



VTA is lowest

Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

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Note: All links verified June 9, 2019

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this 18th day of June 2019.



John Pedersen

Foreperson



June 18, 2019

Ms. Irma Torrez
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, California 95037

Sent via email: irma.torrez@morganhill.ca.gov

Dear Ms. Torrez:

The 2018-2019 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Inquiry into the Governance of the Valley Transportation Authority.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

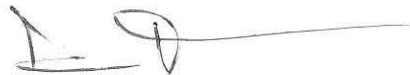
Please note:

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with the applicable Finding: 1. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.
2. As stated in Penal Code § 933.05(b), attached, you are required to respond to each applicable Recommendation: 1c, 1d, and 1e with one of four possible actions.

Your comments are due to the office of the Honorable Deborah A. Ryan, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Monday, September 16, 2019.**

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,

A handwritten signature in dark ink, appearing to be 'JP' followed by a long horizontal stroke.

John Pedersen
Foreperson
2018-2019 Civil Grand Jury

Encl.: Inquiry into the Governance of the Valley Transportation Authority

California Statutes Annotated - 2018

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure (Refs & Annos)

Title 4. Grand Jury Proceedings (Refs & Annos)

Chapter 3. Powers and Duties of Grand Jury (Refs & Annos)

Article 2. Investigation of County, City, and District Affairs (Refs & Annos)

West's Ann.Cal.Penal Code § 933.05

§ 933.05. Responses to findings

Currentness

(a) For purposes of [subdivision \(b\) of Section 933](#), as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of [subdivision \(b\) of Section 933](#), as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall

respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

Credits

(Added by [Stats.1996, c. 1170 \(S.B.1457\)](#), § 1. Amended by [Stats.1997, c. 443 \(A.B.829\)](#), § 5.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

[Stats.1997, c. 443 \(A.B.829\)](#), in subds. (a) and (b), in the introductory paragraphs, substituted “(b)” for “(c)”; in subd. (b)(3), substituted “head” for “director”; in subd. (c), inserted “agency or” throughout; inserted subd. (e), relating to investigations and meetings with the grand jury; and, in subd. (f), substituted “presiding” for “supervising”.

CROSS REFERENCES

Grand jury defined, see [Penal Code § 888](#).

Words and phrases, “county”, see [Penal Code § 691](#).

RESEARCH REFERENCES

Encyclopedias

[Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 716](#), Recommendations and Reporting.

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[Witkin, California Criminal Law 4th Introduction to Criminal Procedure § 43](#), Reports.

West's Ann. Cal. Penal Code § 933.05, CA PENAL § 933.05

Current with all 2017 Reg.Sess. laws.

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City Manager's Office
 17575 Peak Avenue
 Morgan Hill, CA
 95037-4128
 Phone: 408-776-7382
 FAX: 408-779-1592
 WWW.MORGANHILL.CA.GOV

DRAFT

September 4, 2019

Honorable Deborah A. Ryan, Presiding Judge
 Santa Clara County Superior Court
 ATTN: Clerk of the Court
 191 North First Street
 San Jose, CA 95113

Re: Response to Grand Jury Report: Inquiry into Governance of the Valley Transportation Authority, dated June 18, 2019.

Judge Ryan:

In accordance with California Penal Code Section 933(c), the City of Morgan Hill City Council respectfully submits the following responses to the Grand Jury Report dated June 18, 2019.

Finding 1

The VTA Board, currently made up exclusively of elected official from the Santa Clara County, Board of Supervisors, the City of San Jose and the other smaller cities in the County, suffers from:

- A lack of experience, continuity and leadership;
- Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions;
- A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;
- Domination, in terms of numbers, seniority and influence, by representation of the Santa Clara County Board of Supervisors and the City of San Jose; and
- Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Response: *Morgan Hill agrees with the finding and consistent with recommendation 1c, will deliver a report regarding its view of VTA governance and demographic representation significance by December 31, 2019.*

Recommendation 1c



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As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. This report should be completed and delivered prior to December 31, 2019.

Response: *The recommendation has not yet been implemented. The recommendation will be implemented in the future in accordance with the time schedule provided by the Grand Jury; December 31, 2019. Morgan Hill will look critically at the issue of jurisdictional diversity and methods of ensuring proportional, but highly qualified demographic representation.*

Recommendation 1d

Within six months following the completion of the studies and report specified in Recommendation 1a, 1b, and 1c, the County of Santa Clara and /or one or more of VTA's other constituent agencies should propose enabling legislation , including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Response: *The recommendation requires further analysis. Morgan Hill would like to be instrumental in determining the implementation steps and strategy for any agreed upon governance changes that strengthen the demographic representation, quality, term, and expertise of the Governing Board. Until those are known, Morgan Hill is unable to determine whether this recommendation is unwarranted or unreasonable. Morgan Hill will defer this determination to the findings of further reports and recommendations regarding an improved structure, if made, in accordance to the schedule recommended by the Grand Jury.*

Recommendation 1e

In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Response: *The recommendation requires further analysis. Morgan Hill agrees to be instrumental in determining the implementation steps and strategy for any agreed upon governance changes that strengthen the demographic representation, quality, term, and*



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expertise of the Governing Board. Until those are known, Morgan Hill is unable to determine whether this recommendation is unwarranted or unreasonable. Morgan Hill will have to defer to the findings of further reports and recommendations regarding an improved structure, if made.

Sincerely,

Christina Turner
City Manager

August 19, 2019

Honorable _____
 Presiding Judge
 Santa Clara County Superior Court
 191 North First Street
 San Jose, CA 95113

Re: Civil Grand Jury Report - *Inquiry into Governance of the Valley Transportation Authority* (June 18, 2019)

Honorable _____,

On behalf of the City of Palo Alto, I would like to express our appreciation for the effort and commitment demonstrated by the Santa Clara County Civil Grand Jury's report, entitled *Inquiry into Governance of the Valley Transportation Authority* (June 18, 2019). As required by California Penal Code §§ 933(c) & 933.05 (a) & (b), this letter represents the City's response on recommendations that involve the City of Palo Alto.

The following are the recommendations most relevant to Palo Alto, along with our responses:

Recommendation 1a: VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Response: The City of Palo Alto requests that the charge to VTA be clarified to include not only "large city" transportation agencies, but specifically metropolitan areas (such as Portland, Oregon) where transit agency service areas span multiple municipalities. It is also important that VTA engage all cities equally in this study, and not allow the current governance structure to limit the involvement of cities that do not currently have voting representatives on the VTA board.

Recommendation 1b: As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.

Response: The City of Palo Alto requests that the charge to the County of Santa Clara be clarified to specifically include metropolitan areas (such as Portland, Oregon) where transit agency service areas span multiple municipalities.

Recommendation 1c: As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Response: The City of Palo Alto appreciates the Civil Grand Jury's recommendation that cities be directly and actively engaged in the discussion of alternative governance structures for VTA. Consistent with the circumstances described in the Civil Grand Jury's report, however, smaller cities are not immediately positioned to engage and advance a consensus position on this issue. Meaningfully providing input to this process will require that cities without designated seats on the VTA Board be given the time and resources necessary to consider a consensus position.

Specifically, it may be necessary to evaluate the governance of VTA not only in terms of population distribution, but also factors such as employment and sales tax generation given that a majority of VTA's revenues are generated from sales tax measures. As a major employment center and sales tax generator at the edge of VTA's service territory, Palo Alto has historically been underrepresented in VTA policy decision in ways that do not serve the travelling public. How representation relates to communities of interest with shared permanent transportation issues, such as Caltrain and High Speed Rail interests may also be a consideration. Pending decisions on railroad grade separation funding under Measure B pose further risks to VTA's ability to follow through on commitments made to Santa Clara voters, such that a thoughtful consideration of governance is particularly timely.

The City of Palo Alto therefore requests that VTA provide funding to an appropriate fiscal agent, such as the Cities Association of Santa Clara County, to provide the resources needed for a thoughtful discussion of alternatives and positions by cities without designated seats on the VTA Board. This discussion should include the potential support for organizations similar to Councils of Governments that can sustainably represent the interests of multiple municipalities. Once this funding is committed, at least 120 days will be needed to complete the discussion and documentation of perspectives and recommendations to the VTA Board and County Board of Supervisors.

Recommendation 1d: Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Response: Per the response comments provided for Recommendation 1C, the City of Palo Alto is open to participating in the development of such legislation, assuming it addresses the root concerns that lead to underrepresentation of the smaller jurisdictions, particularly communities bordering other counties.

Recommendation 1e: In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Response: While continuity is very important for the functionality of the board, the continuity is only effective if it is fairly distributed among the constituent agencies. In other words, extending the term for chairpersons representing San Jose or Santa Clara County could actually exacerbate other issues discussed in the report. Given this, we believe it may be premature to commit to a specific action such as increasing the Chairperson's term to two years. Palo Alto would prefer to hold this recommendation in abeyance in order to allow time for overall recommendations to be developed.

Should you have any questions or concerns regarding this response, please feel free to contact City Manager Ed Shikada at ed.shikada@cityofpaloalto.org.

Sincerely,

Eric Filseth, Mayor

cc: VTA Board
Palo Alto City Council

TOWN OF LOS ALTOS HILLS
Staff Report to the City Council

August 21, 2019

SUBJECT: RESPONSE TO THE GRAND JURY INQUIRY REPORT ON
GOVERNANCE OF THE VALLEY TRANSPORTATION
AUTHORITY

FROM: Cody Einfalt, Management Analyst C.E.

APPROVED: Carl Cahill, City Manager C.C.

RECOMMENDATION:

That the City Council consider approving the attached response letter to the Santa Clara County Civil Grand Jury Report, "Inquiry into the Governance of the Valley Transportation Authority".

BACKGROUND:

The 2018-2019 Civil Grand Jury began investigation of VTA on August 15, 2018 and found that:

- VTA's operating performance has continued to deteriorate over the last 10 years, relative to both its own historical performance and the performance of its peers, across a wide variety of metrics;
- The VTA Board has continuously failed to adequately monitor VTA's financial performance and has taken action, albeit less than fully effective action, only in the face of imminent financial crises; and
- Despite the serious ongoing structural financial deficit, the VTA Board has been unwilling to review and reconsider decisions made years or even decades ago regarding large capital projects (and their attendant operating costs) that are no longer technologically sound or financially viable, based in their costs and projects ridership.

Pursuant to California Penal Code Section 933.05, the Town of Los Altos Hills is required to respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations within the final report on the management of the VTA.

Attachment 1 to this report is a proposed letter to the Grand Jury's report stating the Town's response on the report's findings and recommendations.

ATTACHMENTS

1. Proposed response to the VTA report
2. Letter received from the Grand Jury – dated June 18, 2019
3. California Penal Code Section 933.05 – Responses to findings
4. Inquiry into the Governance of the Valley Transportation Authority Final Report

August 21, 2019

Via E-mail CGJ@scscourt.org and First Class Mail

Honorable Deborah A. Ryan
Presiding Judge, Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

RE: Response to the 2018-19 Santa Clara County Civil Grand Jury Final Report titled,
“Inquiry into Governance of the Valley Transportation Authority”

Dear Judge Ryan:

The Town of Los Altos Hills is providing its response to the to Santa Clara County Civil Grand Jury Final Report titled, **“Inquiry into the Governance of the Valley Transportation Authority”**. According to the report, the Town is required to respond to Findings 1 and to Recommendations 1c, 1d, and 1e.

As directed by the Civil Grand Jury, responses are provided in accordance with Section 933.05(a) and (b) of the California Penal Code. The responses are as follows:

Finding 1 – The VTA Board, currently made up exclusively of elected officials from the Santa Clara County, Board of Supervisors, the City of San Jose and the other smaller cities in the County, suffers from:

- A lack of experience, continuity and leadership;
- Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands on their elected positions;
- A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;
- Domination, in terms of numbers, seniority, and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San Jose; and
- Frequent tension between the director’s fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Honorable Deborah A. Ryan
August 21, 2019
Page 2

The Town of Los Altos Hills agrees with this Finding.

Recommendation 1c – As constituent agencies of VTA, each of the cities in the county should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance. With specific reference to elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

This recommendation has not yet been implemented, but will be implemented prior to the December 31, 2019 due date. (Discussion of the Grand Jury report was discussed at the Los Altos Hills August 21, 2019 Special City Council Meeting and direction was given in how to proceed).

Recommendation 1d – Within six months following the completion of the studied and reports specified in Recommendations 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 10063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the director's term of service, the addition of term limitations, and the inclusion of appointed directors who are not currently serving elected officials).

This recommendation will not be implemented by the Town of Los Altos Hills because it is not warranted or reasonable. The Town has a population size of around 8,000 with minimal knowledge on VTA transportation services. However, the Town believes it is more appropriate for a larger constituent agency to take the lead role of implementing legislation amending the California Code. The Town can offer its participation in the review of any proposed legislation at the time it is presented.

Recommendation 1e – In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studied and reports specified in Recommendation 1a, 1b, and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

This recommendation will not be implemented by the Town of Los Altos Hills because it is not warranted or reasonable. For the same reasons listed in the response to Recommendation 1d, due to the minimal knowledge on VTA transportation services, the Town believes it is more appropriate for a larger constituent agency to take the lead role of implementing legislation amending the California Code. The Town can offer its participation in the review of any proposed legislation at the time it is presented.

Honorable Deborah A. Ryan
August 21, 2019
Page 3

This concludes the Town's responses to the findings and recommendations in the Final Report. Please contact me at (650) 941-7222 if you have any questions or need any additional information related to this response.

Sincerely,

Carl Cahill
City Manager
ccahill@losaltoshills.ca.gov

cc: Los Altos Hills City Council
Cody Einfalt, Management Analyst



June 18, 2019

Ms. Deborah Padovan
Town of Los Altos Hills
26379 Fremont Road
Los Altos Hills, California 94022

Sent via email: dpadovan@losaltoshills.ca.gov

Dear Ms. Padovan:

The 2018-2019 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Inquiry into the Governance of the Valley Transportation Authority.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

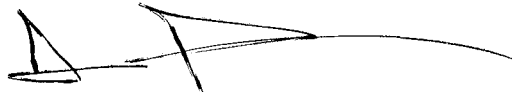
Please note:

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with the applicable Finding: 1. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.
2. As stated in Penal Code § 933.05(b), attached, you are required to respond to each applicable Recommendation: 1c, 1d, and 1e with one of four possible actions.

Your comments are due to the office of the Honorable Deborah A. Ryan, Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Monday, September 16, 2019.**

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Pedersen', with a long horizontal flourish extending to the right.

John Pedersen
Foreperson
2018-2019 Civil Grand Jury

Encl.: Inquiry into the Governance of the Valley Transportation Authority

California Statutes Annotated - 2018

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure (Refs & Annos)

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§ 933.05. Responses to findings

Currentness

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall

§ 933.05. Responses to findings, West's Ann.Cal.Penal Code § 933.05

respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

Credits

(Added by Stats.1996, c. 1170 (S.B.1457), § 1. Amended by Stats.1997, c. 443 (A.B.829), § 5.)

HISTORICAL AND STATUTORY NOTES**2008 Main Volume**

Stats.1997, c. 443 (A.B.829), in subds. (a) and (b), in the introductory paragraphs, substituted "(b)" for "(c)"; in subd. (b)(3), substituted "head" for "director"; in subd. (c), inserted "agency or" throughout; inserted subd. (e), relating to investigations and meetings with the grand jury; and, in subd. (f), substituted "presiding" for "supervising".

CROSS REFERENCES

Grand jury defined, see Penal Code § 888.

Words and phrases, "county", see Penal Code § 691.

RESEARCH REFERENCES**Encyclopedias**

Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 716, Recommendations and Reporting.

Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 717, Responses to Findings.

Treatises and Practice Aids

Witkin, California Criminal Law 4th Introduction to Criminal Procedure § 43, Reports.

West's Ann. Cal. Penal Code § 933.05, CA PENAL § 933.05

Current with all 2017 Reg.Sess. laws.

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CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING CHAPTER 6.36- ANIMAL AND LAND USE, OF TITLE 6 - ANIMALS OF THE CITY OF MORGAN HILL MUNICIPAL CODE TO ALLOW HOBBYIST BEEKEEPING

RECOMMENDATION(S)

1. Waive first and second reading of Ordinance amending Chapter 6.36 “Animals and Land Use” to allow hobbyist beekeeping; and
2. Introduce Ordinance amending Chapter 6.36 “Animals and Land Use” to allow hobbyist beekeeping.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

POLICY CONSIDERATION:

Should the City modify the Municipal Code to allow hobbyist beekeeping?

REPORT NARRATIVE:

Bee populations are declining throughout the country due to habitat loss from urbanization, the use of toxic pesticides, invasive species, and climate change. Furthermore, new diseases have made it harder for the population of bees to regenerate to a healthy number. Pollinating insects, like bees, are essential for the production of fruits, nuts, and numerous other flowering plants that are valued by the community. Pollinators contribute more than \$24 billion to the United States’ economy, of which bees account for more than \$15 billion through their vital role in keeping fruits, nuts, and vegetables in our diets. Our society’s heavy dependence on bees for food production and economic growth is a sign that the City should consider becoming a more bee-friendly community.

In an effort to help increase the population of honeybees, staff is proposing a change in the City’s beekeeping regulations. The existing ordinance (City Municipal Code 6.36.270) only allows beekeeping in areas that are zoned specifically for agricultural use. Since there is not much agriculturally zoned land currently within the City, the Code makes it nearly impossible for hobbyist beekeeping in Morgan Hill.

Based on staff consultation with representatives of the County Agricultural Commissioner’s Office, Santa Clara Valley Beekeepers Guild, and Gilroy Beekeepers Association, and a review of the beekeeping regulations in other communities, staff

recommends changing the Municipal Code to allow beekeeping with the following restrictions:

1. Hobbyist beekeeper must register their apiary with the County Agricultural Commissioner.
2. One hive can be kept on a property with a lot size between 5,000 - 10,000 square feet. Up to two hives can be kept on property with a lot size exceeding 10,000 square feet. Beekeepers who seek to keep more hives must get the unanimous written consent from abutting property owners.
3. All hives are to be located in a side yard or backyard and must be easily accessible by City Inspectors.
4. All hives must be located at least 25 feet from the rear property line and at least 10 feet from the side yard property line that the apiary is registered in.
5. All hives in an apiary must have an adequate supply of water within 3 feet of the hives to prevent bees from foraging in undesirable areas.
6. Any hives that exceed 6 feet in height must be anchored with ratchet straps to prevent toppling during wind and earthquake events.

Staff recommends introducing the attached ordinance which integrates these restrictions into the Municipal Code.

COMMUNITY ENGAGEMENT: Consult

A survey was pushed out to the community for public input on the proposed change. There was a total of 157 respondents to the survey and 95% of the respondents were current residents of the City.

Public Concerns:

- A significant number of respondents reported they were aware of the decline in bee population (52% Extremely Aware, 33% Very Aware, 11% Somewhat Aware, and 3% were Not so Aware).
- Based on public reports, 64% of the respondents were not concerned about beekeeping in neighboring properties, 20% were a little concerned, 16% were moderately concerned to greatly concerned.
- The most common concern that residents reported was getting stung by aggressive bees.
- Respondents who were not concerned about beekeeping were receptive to the ordinance and do hope to see more bees.

Public Interest:

- Most of the respondents are not likely to be future beekeepers.
- 37% of the respondents answered that they are likely to start an apiary once the ordinance is passed (22% Very Likely, 15% Likely).
- 45% of the respondents answered they are unlikely to start an apiary if the ordinance were to pass (20% Unlikely, 25% Very Unlikely).
- 17% of the respondents were neutral about starting an apiary if the ordinance were to pass.

Public Follow-Up Interest:

- The majority of the respondents were open to receiving more educational materials from local beekeeping organizations.
- 60% of the respondents answered that they would like to receive more education regarding beekeeping (25% Definitely Would, 35% Probably Would).
- 39% of the respondents did not want to receive any educational newsletter from local beekeeping organization (25% Probably Would Not, 14% Definitely Would Not).

ALTERNATIVE ACTIONS:

The City Council could decline to take action to encourage beekeeping at this time or could direct staff to evaluate other measures to achieve conservation of honeybees such as enhanced public education and planting native gardens in public parks.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Morgan Hill's current beekeeping regulations have not been evaluated or revisited by the Council in decades.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested at this time. Staff resources expended on this project were accommodated within the Community Services Department's existing workplan.

CEQA (California Environmental Quality Act):

Categorical Exemption.

This Ordinance and actions taken hereafter pursuant to this Ordinance are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15305(i) (Minor Alterations in Land Use Limitations).

LINKS/ATTACHMENTS:

1. Proposed Ordinance re: Keeping of Bees

ORDINANCE NO. XXXX, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 6.36 (“ANIMALS AND LAND USE”) IN TITLE 6 (“ANIMALS”) OF THE MORGAN HILL MUNICIPAL CODE TO ALLOW RESIDENTIAL BEEKEEPING UNDER CERTAIN CIRCUMSTANCES

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
ORDAIN AS FOLLOWS:**

Section 1. Declaration of Purpose and Intent.

The purpose of this Ordinance is to amend Section 6.36 of the City of Morgan Hill Municipal Code to allow residential beekeeping under certain circumstances.

Section 2. Section 6.36.030 (“Definitions”) of Chapter 6.36 (“Animals and Land Use”) in Title 6 (“Animal”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

6.36.030 – DEFINITIONS

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- A. "Agricultural zone," "commercial zone," "industrial zone" and "residential zone" mean all areas within the city zoned for agricultural uses, commercial uses, industrial uses and residential uses, respectively, as established by the official zoning ordinances of the city.
- B. “Apiary” as used in this chapter refers to where bees, hives, and any accessory appliances related to beekeeping is located.
- C. “Bees” as used in this chapter means honey-producing insects of the genus *Apis*. It includes all life stages of these insects.
- D. “Colony” as used in this chapter refers to one hive and its content, including bees, combs, and appliances.
- A.E. “Corral” means an area enclosed by fencing for the keeping of livestock.
- B.F. “Enclosed premises” means any lot or premises so enclosed as to prevent any animal or fowl confined thereon, escaping therefrom, or any animal or fowl from entering thereon.
- C.G. “Health officer” means the county health officer acting as the health officer of the city.
- H. “Hive” as used in this chapter refers to any receptacle, containers, or structure in which a colony is established.
- I. “Hobbyist beekeeper” as used in this chapter refers to the person maintaining an apiary in residential areas.

~~D.J.~~ _____ "Household pets" means and includes dogs, cats, canaries, parrots and other kindred birds and animals which are legal to possess in the state of California, that are usually or ordinarily kept as household pets.

~~E.K.~~ _____ "Livestock" means and includes horses, ponies, mules, burros, jacks and jennies, cows, bulls, calves, heifers, llamas, sheep, goats, and all other domestic or domesticated animals that are legal to possess within the state of California except swine, hogs, pigs and other household pets.

~~F.L.~~ _____ "Person" means an individual, firm, partnership or corporation, and their heirs, assigns, executors, administrators or agents.

~~G.M.~~ _____ "Private use" means keeping of animals for private purposes and enjoyment and occasional sale.

~~H.N.~~ _____ "Poultry" means and includes chickens, turkeys, ducks, geese, pigeons and all other fowl including birds which are kept in outdoor aviaries.

~~I.O.~~ _____ "Poultry ranch" means any premises, including outdoor aviaries, where a combined total of fifteen or more domestic fowl and poultry are kept, maintained, harbored or controlled by any person. Poultry under three months of age and not exceeding fifteen in number shall not be considered in computing the number of fowl on the premises.

~~J.P.~~ _____ "Public stable" means any building or structure for the keeping of two or more horses which are not owned by the occupant of the premises, and are so kept for remuneration, hire or sale.

~~K.Q.~~ _____ "Rabbits and small animals" means and includes hares, hamsters, chinchillas and guinea pigs, and all types of rodents.

~~L.R.~~ _____ "Rabbit ranch" means any premises where eight or more rabbits are kept, maintained, harbored or controlled by any person. Rabbits under three months of age and not exceeding fifteen in number shall not be considered in computing the number of rabbits on the premises.

~~S.~~ _____ "Rear yard" means a yard extending across the full width of the lot between the main building and the rear lot line; the depth of the required rear yard shall be measured horizontally from the nearest part of the main building toward the rear lot line.

~~M.T.~~ _____ "Side yard" means an open space between a main building and the side lot line, extending from the front yard to the rear yard, the width of which is the horizontal distance from the nearest point of the side lot line to the nearest point of the main building.

Section 3. Section 6.36.270 ("Keeping of swine or bees prohibited-Exceptions") of Chapter 6.36 ("Animals and Land Use") in Title 6 ("Animals") of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

6.36.270 – Keeping of swine ~~and bees~~ prohibited - Exceptions

"It is unlawful for any person to keep, maintain or permit to be maintained any swine ~~or bees~~ on any premises within the city, except within those premises which have been zoned for agricultural use."

Section 4. Section 6.36.275 (“Keeping of bees regulation”) of Chapter 6.36 (“Animals and Land Use”) in Title 6 (“Animal”) is hereby added to the Morgan Hill Municipal Code as follows:

6.36.275 – Keeping of bees regulations

A. Hobbyist beekeeper in single-family residential property must register any operating apiary with the Santa Clara County Agricultural Commissioner. Number of colonies, location of apiary, and first and last name of the apiary owner must be clearly stated in the application.

B. It is unlawful for a hobbyist beekeeper to maintain an apiary in the City of Morgan Hill that is not registered with the County Agricultural Commissioner.

C. A hobbyist beekeeper can keep one hive on a property with a lot size between 5,000 square feet and 10,000 square feet. Up to two hives can be kept on property with a lot size exceeding 10,000 square feet.

1. EXCEPTIONS: with written unanimous consent from adjacent property owners, property with a lot size between 5,000 square feet and 10,000 square feet can keep up to 2 hives, and property with a lot size exceeding 10,000 square feet can keep up to 3 hives.

D. Prior to placing an apiary within a 1,000 feet radius of a church, school, public building, dairy, or corral, the hobbyist beekeeper must obtain written permission from such entities

E. All hives in an apiary must have an adequate supply of water within 3 feet of the hives to prevent bees from foraging in undesirable areas.

F. All hives must be located in a side yard or backyard and must be easily accessible by County Inspectors.

G. All hives must be located at least 25 feet from the rear property line and at least 10 feet from the side yard property line that the apiary is registered in.

H. Any hives that exceeds 6 feet in height must be anchored with ratchet straps to prevent toppling during wind and earthquake events.

I. All hives must have the entrance facing a dwelling or building on the property that the apiary is registered in or to be surrounded by a solid perimeter fence not less than six feet in height.

J. Continuing hobbyist beekeepers must renew their registered apiary within 30 days after January 1 of each year.

K. All hives must have the owner’s name, owner’s phone number and address, and apiary registration number, visibly displayed in dark letters in front of each hive entrance.

Section 5. CEQA Exemption

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15305(i) (Minor Alterations in Land Use Limitations)

Section 6. 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 7. Effective Date; Posting.

This Ordinance shall take effect on ____ ____, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the ____ day of ____, 20__, and adopted at a meeting held on the ____ day of ____, 20__, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: APPROVED:

IRMA TORREZ, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. ____, New Series,

City of Morgan Hill
Ordinance No. 1209, Revision
Page 5 of 5

adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Proposed Ordinance re: Keeping of Bees (2441 : Bee Friendly Ordinance)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 4, 2019

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING BUILDING ELECTRIFICATION INCENTIVES AND REQUIREMENTS INCLUDING REACH CODES

RECOMMENDATION(S)

Provide policy direction to staff on electrification initiatives.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

POLICY CONSIDERATIONS:

- What level of Reach Code or other restriction should the City implement to reduce or eliminate the combustion of natural gas in new development?
- Should the City pursue a “Retrofit-at Resale” ordinance or other requirement to reduce or eliminate the combustion of natural gas in existing buildings?

REPORT NARRATIVE:

The purpose of this agenda item is to receive policy direction from the Council on the approaches the Council would like the City to take in reducing the carbon footprint from buildings in the City. Once this policy direction is received, staff will further develop program ideas, share the ideas with the community, and return to the Council for implementing actions.

The following developments from the past two years have precipitated this report:

- The growing body of evidence that the Climate Crisis is real and demands action;
- The abdication of the federal government in taking action to address the Climate Crisis – which necessitates that state and local governments play a leading role in steering societal changes that may lead to climate stability; and
- The successful decarbonization of the region’s electricity supply, via Silicon Valley Clean Energy (SVCE), which clearly makes electricity the cleanest fuel for building energy. Natural gas combustion in dual-fuel buildings is now the second largest source (after transportation) of climate-changing emissions in our community.

When taken in total, the above three developments have led City and agency staff throughout the region to conclude that local government actions to reduce or eliminate

natural gas emissions from buildings are the next logical frontier in addressing the Climate Crisis.

What is the Problem

Emissions from natural gas combustion, and propane in areas unserved by natural gas, have become the largest source of greenhouse gas emissions associated with buildings. These emissions make up about one-third of the greenhouse gas emissions in our region. Of these emissions in a typical dwelling, about 49% come from water heating, 37% from space heating, and 7% from cooking, with the remainder being pool heating, clothes drying, etc. While the exact numbers for nonresidential buildings vary widely with the type of occupancy, the aggregate nonresidential numbers are 32% for water heating, 36% for space heating, 23% for cooking, and 9% miscellaneous.

Advantages of Electrification (Using electricity to heat and cook)

Many of us grew up hearing that natural gas was superior to electricity because it was more efficient. While this used to be true, three modern electric appliances (heat pump water heaters, heat pump space heaters, and induction cooktops) now offer enhanced efficiency and performance.

In terms of construction costs, avoiding the installation of gas pipelines into a development can save approximately \$7,000 per unit. While the increased cost of installing larger electrical transformers will reduce the net savings, depending on the location, all-electric construction is expected to be less expensive on average. One developer in the community, City Ventures, typically already chooses to construct all-electric homes without natural gas.

On the operational cost side, it is difficult to definitively determine whether an all-electric building will cost more or less to operate because the relative costs of electricity and natural gas fluctuate over time. What is certain is that property owners have the opportunity to own their own solar energy systems, which can offset some or all of their electricity use, and the same cannot be said for their natural gas use.

Lastly, all electric homes are considered substantially safer than their dual-fuel counterparts because there are no emissions within the home from gas combustion and there are no gas pipes that can leak due to wear, age, or earthquake.

Program Options for New Development

The greatest opportunities for electrifying buildings are present when the building is being designed and constructed. In fact, if one assumes that all buildings will need to be eventually converted to electricity, each new dual-fuel building being constructed is creating a future retrofit liability for either the government or private property owners. With this in mind, there have been significant efforts to develop policies encouraging and/or requiring electrification in the past year.

Reach Code

Chief among these efforts is the Reach Code project of SVCE and Peninsula Clean Energy. The consultants hired by these clean energy authorities have analyzed the new

2019 Building Code and developed a model strategy for all jurisdictions in the region to consider. The strategy's basic approach is to:

- Allow all-electric buildings to be constructed without any additional requirements beyond the State Energy Code since they already will not generate operational greenhouse gas emissions; and
- Require dual-fuel buildings to meet a higher energy standard that will substantially increase their efficiency.

The net impact of this approach is that the all-electric buildings become relatively much less expensive to construct because the higher standards imposed on the dual-fuel buildings add to the costs of design and construction – in addition to the reduced costs of all-electric construction to begin with. It is expected that this cost differential will drive more developers to choose the all-electric pathway. At a minimum, it will cause some additional developers to choose all-electric *and* will reduce the carbon footprint in dual-fuel buildings because of the enhanced efficiency.

To be enforceable, Reach Codes need to be “cost-effective” according to State-sanctioned models. As tested, the Proposed Reach Code could require exceeding the Energy Code by 14-25% in single-family buildings, 8-15% in multifamily buildings, and 5-14% for nonresidential buildings depending on the specific use. In general, the higher the increased efficiency requirement is, the larger the incentive is for the developer to construct the building with all-electric equipment. To be clear, even the highest requirements have still been determined to be cost-effective when both construction and operational costs are considered.

Gas Ban

A second concept being considered by some communities is an outright ban on natural gas installations in some types of new construction. Rather than adopting a Reach Code which relies on economic incentives, the gas ban simply requires all-electric construction for buildings, like low-rise residential buildings, that have been proven to be practically served by electricity alone. By relying on a community's police power, the gas ban approach is administratively efficient and, unlike the Reach Code, will not require updating in three years.

Summary

While it would be possible to generate dozens of particular options, the following three core options are presented to the Council for consideration:

1. Minimal Reach Code (Reach Code requirements on the low-end of the scale described above)
2. Maximum Reach Code (Reach Code requirements on the high-end of the scale described above)
3. Gas Ban for buildings eligible + Maximum Reach Code for others

Some people, who are unfamiliar with the housing market, have remarked that these efforts will increase the already-high cost of housing. This is ultimately not the case

because a) The market sets the price of housing – not the costs of construction; and b) Even if housing construction costs impacted the price of new homes, all-electric construction is less expensive so, if anything, this requirement will reduce the price of new homes.

Staff recommends that the Council:

- 1) Prioritize the above options (or other ideas) and direct staff to convene one or more engagement sessions with community stakeholders to further refine the ideas; and
- 2) Direct staff to return to the Council this fall with an implementation ordinance reflecting the Council's priorities.

Addressing Existing Buildings

While the solutions above are powerful tools, the emissions from existing buildings will remain present unless additional actions are taken. SVCE is currently administering a grant program to encourage the installation of heat pump water heaters. While a positive step, this program will barely scratch the surface of retrofitting the region's existing buildings. Some form of additional encouragement or requirement will be needed to further reduce the community's carbon footprint.

One tool available to do this would be a "retrofit at resale" ordinance that would require property owners selling a property to first complete a retrofit before closing the transaction. While these ordinances are challenging and politically difficult, they can definitely be effective. The City is already likely to implement a retrofit at resale ordinance in order to reduce the inflow of stormwater into the City's sewer system as a result of the water quality settlement agreement the City entered into in 2017.

In order to reduce the burden of a retrofit at resale ordinance, staff suggests the following starting points:

- Focus on water and space heating.
- Make the effective date 2030. This would allow property owners to retrofit their properties long prior to a sale in the normal course of replacing failing heating appliances. Require disclosure of the requirement in all transactions closing after 2020 to ensure that new property owners are aware of the future requirement.
- Establish an advance deposit system that would enable a sum, roughly equal to the anticipated costs of a retrofit, to be deposited in an escrow account to fund retrofits completed after the sale. This would allow transactions to close at their normal pace in anticipation of a future retrofit and would also allow retrofits to occur as part of remodeling projects completed after a sale. Unless a building permit is issued for the retrofit within one year after the close of the transaction, the deposit would be forfeited and would be transferred to a fund solely used to subsidize retrofits in properties not being sold.
- Institute reasonable safeguards to address circumstances in which there is no equity in the home provided the property owner did not recently refinance the home in order to avoid the requirement.

COMMUNITY ENGAGEMENT: Inform, Consult, Involve, Collaborate, Empower

This project could ultimately encompass every aspect of the Community Engagement Continuum as different aspects are implemented. While no community engagement activities were completed prior to this meeting, subsequent steps will rely heavily on informing and consulting with the development community and future regulations impacting existing development will empower property owners to take actions to reduce greenhouse gas emissions.

ALTERNATIVE ACTIONS:

The Council could direct staff to pursue any of the options identified.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This item has not come before the Council. The Council last adopted a green building ordinance in 2009.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested at this time. Evaluating program options is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

As this is a preliminary policy discussion for the Council which will be subject to future discretionary actions by the Council which are unknown at this time, this Council item is not a project under CEQA. The CEQA evaluation and findings for future actions which may lead from this discussion will be conducted at the time.

Item # 03

AGENDA DATE: 09/04/19
SUPPLEMENT # 1

From: [D. Muirhead](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: comment Council meeting Sept 4 Agenda #3: IT Consultant
Date: Monday, September 2, 2019 8:06:32 PM

Comments for your Council meeting on September 4, 2019
Agenda Item #3: IT Consultant and Five-year strategic plan

Dear Morgan Hill City Council,

I am opposed to approving this contract at this time. This was not a priority identified at the mid-year goal setting, the consultant is currently funded through mid-January 2020, and we need to see why the many earlier assessments and strategic plans have only taken us to now considering their recommendations and creating yet another strategic plan.

While the staff report stresses the need for immediate action, neither the cited "recent" IT operational risk assessment (aka IT security and infrastructure assessment?) nor this new proposal for day-to-day management of the IT Department are mentioned in the mid-year goal setting Master Work Plan for the City.

While you claim that this meets the Council Ongoing Priority of Maintaining Fiscal Responsibility, you will give the consultants \$15K/month from September 1, 2019 to August 31, 2020. Staff notes that this is in addition to \$15K/month for July and August 2019 from an earlier agreement under City Manager Signature Authority. But that agreement is for \$53K for five months ending January 15 2020: Civic Foundry to provide executive level management of day to day operations of the IT Division.

While the Consultant Scope of Work lists a range of key tasks, the Information Technology Department has had no such public list and does not even have a Department page on the web site with Inform/Engage content.

Before you go and create yet another assessment and strategic plan, tell us what you have done with the many previous efforts [which I contend is what should have appeared under PRIOR CITY COUNCIL AND COMMISSION ACTIONS rather than Not Applicable]:

- * You had a Information Technology Strategic Plan dated October 21, 2008 [not findable with search of City web 9/1]
- * You had a City Network Upgrade project approved by City Council on September 19, 2012
- * You had a City Council report on Network Equipment replacement presented on September 10, 2014
- * You had a Information Services Business Alignment Study dated February 25, 2016 [not findable with search of City web 9/1]
- * You had a Server and Storage Replacement project approved by City Council on June 28, 2017

This referred to a "City Computer Purchasing Policy"
[not findable with search of City web 9/1]

- * Add to this the unpublished IT security and infrastructure assessment.

You formally adopted a Community Inform and Engage Plan several years ago. By design or by default, your changes to this department (relocation of IT division?) and its leadership are nearly invisible outside the Administration.

Since Civic Foundry can continue to provide direction to the IT department under its current contract, this item should come back with its addition to the Master Work Plan and how the previous plans and assessments allowed us to get to the situation we have today.

The Scope of Work includes addressing recommendations from previous IT assessments. All of the items in the summary of services are reasonable (but have we not been here before?):

- Provide technology leadership to the City organization
- Provide day-to-day management of the IT Department (IT staff reports to City management)
- Work with City staff to remediate identified areas that present the greatest current risks
- Finalize an infrastructure consolidation plan leveraging existing cloud licensing
- Reduce footprint and for resource intense on-premise servers
- Architect, plan , and implement a modern network design that results in the prudent expenditure of funds considering upcoming refreshes for firewalls and network equipment (based on budget availability)
- Track IT budget and expenditures
- Recommend IT investments during the City's budget cycle
- Continue to refine the disaster recovery strategy through additional sprints to test recovery of critical City systems
- Deliver a five-year strategic plan for technology as a final deliverable for this engagement

A PRR has been submitted for the security and infrastructure assessment.
Thank you for your consideration, Doug Muirhead, Morgan Hill

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Item # 14

**AGENDA DATE: 09/04/19
SUPPLEMENT # 1**

September 3, 2019

VIA ELECTRONIC MAIL

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Honorable Mayor Constantine and Members
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City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

**Re: Request for Continuance; September 4, 2019 City Council Agenda Item No. 14:
Resolution Adjusting Select Development Impact Fees**

Dear Honorable Mayor Constantine and City Councilmembers:

This office represents a coalition of public and private home builders, and local land owners, in Morgan Hill. On behalf of our client, we have reviewed the materials relating to the City's proposed development impact fee increase prepared for the City Council's September 4, 2019 meeting, which was continued from April 3, 2019.

Based on our review of the staff report prepared for your meeting on September 4, 2019 ("Staff Report"), we understand that the City has undertaken additional review and that the current proposal reflects a reduction to the originally proposed increase. However, the methodology remains unclear. Despite the substantial concerns raised by affected stakeholders prior to the City's continuance of this item in April, the City has proceeded without providing any meaningful opportunity for stakeholders to fully assess the adequacy of the justification for the fees, and the impacts of the proposed fees on the future of housing development in the City.

Through its actions, the City has effectively denied our client its basic request for an opportunity to evaluate the legally required documentation to support the proposed fee increase. As one example, the Staff Report and related documents, including documents prepared well in advance of the hearing date and responsive to several comments submitted by stakeholders in April, were released late Friday afternoon before a holiday weekend, leaving one business day before the hearing date.

1. Changes and Updates Following Continuance of Hearing

In part, the City has proceeded with the following: (1) the Nexus Study has been revised and updated as of July 9, 2019 ("Revised Nexus Study"), (2) a memorandum to the City Council

dated September 4, 2019, specifically addressing our April 2, 2019 letter, was prepared by Dat Nguyen, the Finance Director and reviewed by Christina Turner, the City Manager (Attachment 7 to the Staff Report), and (3) a memorandum to Dat Nguyen dated April 10, 2019, specifically addressing our April 2, 2019 comment letter, was prepared by Willdan Financial Services ("Willdan").

The current fees are \$38,682 for a single-family unit, \$32,377 for a multi-family unit greater than 1,200 square feet, and \$28,672 for a multi-family unit less than 1,200 square feet. The proposed total fee increase has been reduced (with the removal of park and general public facilities impact fees), from the initial proposal for \$53,405 for a single family dwelling unit to \$43,695, from \$41,551 for a multi-family dwelling unit to \$33,417 and from \$35,313 for a senior/downtown/accessory unit to \$28,672.

While we are encouraged by the City's efforts to more carefully consider the methodology in calculating the proposed increase as well as the implications of the proposed fees on the feasibility of housing development, the significant increase warrants close review. But the City's continued reluctance to release relevant information in a timely manner has prevented our client, its consultants, and others from providing critical feedback.

2. Requests for Information, Including Under the Public Records Act, and City's Non-Responsiveness

As you are aware, by letter dated April 2, 2019, a copy of which is attached, we expressed our initial concerns regarding the proposed fee increase and the adequacy of the Nexus Study. By separate letters, the Building Industry Association of the Bay Area expressed its concerns with the proposed fee increase, and Glenrock Builders, Inc. objected to the proposed fee increase. Each of the letters outlined specific concerns and requested that the City more fully assess whether any new or increased fee would individually or cumulatively represent a constraint to new housing and complete a more careful analysis of cost projections.

By letter dated August 20, 2019, in anticipation of the hearing scheduled for this week and having no update from the City, we submitted a request made pursuant to the Public Records Act, Government Code Sections 6250, *et seq.* (the "Act"), for records relating to the proposed fee, a copy of which is attached hereto. Section 6253(c) of the Act requires that within 10 days from receipt of a request, a city shall determine whether the request seeks copies of disclosable public records in its possession and shall "promptly notify the person making the request of the determination and the reasons therefor." In unusual circumstances, the time limit prescribed may be extended by written notice.

As of the morning of August 30, 2019, the tenth day following our request, we had received no response or acknowledgment whatsoever, notwithstanding that the City had in its possession the Revised Nexus Study dated July 2, 2019 as well as the April 10, 2019 memorandum prepared by Willdan to respond to our April 2, 2019 letter. We contacted both the City Clerk's Office and City Attorney's Office on August 30, 2019 and in response, the City Attorney provided the following response by email on **Friday at 2:34 pm**:

We will provide all non-privileged records responsive to your request within a reasonable period of time, as required by Government Code section 6253. However, your request includes,

without any limitation, all records (including correspondence and memoranda), related to the City's fee study as well as similar records related to each of our master plan documents.

Due to the breadth of your request and the volume of information that we need to collect and review for responsiveness and privilege, it will take time to compile all of the records you have requested. We can provide records on a rolling basis starting next week, but **we anticipate it will take several weeks to produce responsive electronic records**. It may take longer to produce hard-copy documents that are located in off-site storage.

Unless you request otherwise, we will begin by producing non-privileged correspondence regarding the fee study. In the meantime, if there are other specific documents that you would like to receive before the hearing on Wednesday, we would be happy to provide those separately.

For convenience, all of the City's infrastructure plans can be found here: <https://www.morgan-hill.ca.gov/1646/Infrastructure-Master-Plans>. We will also forward you a link to the agenda materials when they are made available **later today**.

(Emphasis added.) There are several issues raised by the City's response, which in part, does not conform to the requirements Act.

First, our request seeks documentation relating to the proposed fee increase, and given that the City is actively involved in this effort, relevant documentation should be readily available. Relatedly, to the extent that the Revised Nexus Study finalized in July (it is dated July 2, 2019) and responses to our comment letter prepared by Willdan in April and were in the City's possession (the memorandum prepared by Willdan is dated April 10, 2019), the City should have earlier responded to our records request with a status update, and/or provided us with copies of these documents before Friday afternoon. The City's lack of responsiveness and lack transparency on an issue that will significantly impact the future of housing in Morgan Hill is problematic.

Second, to the extent our request relates to records that are voluminous and perhaps not relevant to our inquiry, the City is required under the Act to assist in identifying records and information that are responsive to the request. Section 6253.1 states in pertinent part, "[w]hen a member of the public requests to...obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances: (1) Assist the member of the public to identify records and information that are responsive to the request..."

3. Flawed Analysis in Responsive Memoranda

In our April 2, 2019 letter, we expressed our concern that in light of the current housing crisis, it is vital that the City also evaluate the long-term effect the proposed fee increases will have on

the feasibility of developing any new housing as envisioned under the General Plan, and on the ever-increasing costs of existing housing. As an initial matter, the memorandum prepared by the Finance Director in response to our letter completely ignores the impact of the increased fees on market-rate housing development.

In its focus on affordable housing projects, it purports to demonstrate that the proposed fee increases in will not impact affordable housing development in Morgan Hill. While acknowledging that the proposed increases are significant in both dollar and percentage, the memorandum explains that when factoring in the elimination of the City's Residential Development Control System (RDSCS) contributions for affordable housing projects, affordable housing projects would see a significant decrease in the combined contribution amount.

Moreover, the memorandum simply demonstrates that because affordable housing projects are no longer required to compete in the RDSCS process and, therefore, can be awarded an allotment without having to make a public benefit contribution, the proposed fees can potentially be lower than what would have been required under the RDSCS process. Even assuming for the sake of argument that the two affordable housing projects used as examples are representative of all affordable housing projects in the City, the lower fees that would be required under the proposed fees are a result of not having to provide a RDSCS contribution to obtain an allotment.

In order to adequately assess impacts on all housing development in the City, a similar analysis, based on a broader range of housing types, for both affordable and market-rate housing must be undertaken.

4. Revised Nexus Study Remains Inadequate

The memorandum prepared by Willdan dated April 10, 2019 in response to our letter accurately describes the basic legal requirement that a nexus study demonstrate how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed. The study methodology described in the Revised Nexus Study and setting forth the following six steps to calculate the impact fees is also sound: (1) Estimate existing development and future growth; (2) Identify facility standards; (3) Determine facilities required to serve new development; (4) Determine the cost of facilities required to serve new development; (5) Calculate fee schedule; and (6) Identify alternative funding requirements.

However, accuracy in the underlying assumptions and projections is critical to justify the fee. The significant increase proposed suggests a reliance on flawed data that must be closely scrutinized by the City. Indeed, the calculation of fees is complex, and while Willdan asserts that its methodology is consistent with "standard practice in the industry, and with case law interpreting this requirement," case law decided as recently as May 15, 2019 demonstrates the complexity of a legally defensible study. (*Boatworks LLC v. City of Alameda* (2019) 35 Cal.App.5th 290.)

Significantly, in *Boatworks LLC*, the Court of Appeal struck down impact fees adopted by the City of Alameda based on a nexus study prepared by Willdan. In part, the Court held that the fees improperly passed through the purported cost of acquiring land for parks that the City already owned and that the City could not include future, unopened parks in the calculation of the baseline for determining the amount of parkland necessary to maintain existing service levels in the City when the City expressly intended to use the impact fees to pay for the

construction of those parks. The case underscores the importance of closely examining the information underlying a nexus study. Our client and others request the opportunity to do so, and request that the City demonstrate that it has done so prior to rendering its decision.

For example, the memorandum prepared by Willdan explains that the facilities information is based on City master planning efforts and City staff expertise and such facilities are required to serve the City's projected 2035 General Plan service population. We have requested information relating to master planning efforts in order to review it for consistency and the City has yet to provide copies of such documents.

As another example, the August 26, 2019 letter from Glenrock Builders, Inc. identifies a potentially significant deviation from the projected cost of building planned library facilities, which the Revised Nexus Study states in Table 5.3 will be \$4,500,000 for a 5,000 square foot expansion. Based on its recent, independent research, Glenrock Builders, Inc. found the projected cost is less than \$1,750,000. Glenrock requested an evaluation of estimated costs. Yet the Revised Nexus Study fails to address this apparent discrepancy and does not explain how the City determined the cost of required facilities.

We reiterate that the drastic increases purportedly justified by the Revised Nexus Study, warrant close examination. Based on the foregoing, and in light of the fact that relevant documents specifically requested by our office will not be made available for review for several weeks, we request that the item be continued.

We appreciate your time and consideration.

Very truly yours,



Kristina D. Lawson

KDL:rsc

Attachments

Attachment 1

KRISTINA D. LAWSON
PARTNER
DIRECT DIAL (925) 746-8474
DIRECT FAX (925) 746-8490
E-MAIL klawson@hansonbridgett.com



April 2, 2019

VIA ELECTRONIC MAIL

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rich.constantine@morganhill.ca.gov
larry.carr@morganhill.ca.gov

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rene.spring@morganhill.ca.gov
john.mckay@morganhill.ca.gov

Honorable Mayor Constantine and Members
of the City Council
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Request for Postponement; April 3, 2019 City Council Agenda Item No. 13: Resolution
Updating the City's Select Development Impact Fees

Dear Honorable Mayor Constantine and City Councilmembers:

This office represents a broad coalition of public and private home builders as well as local land owners. On behalf of our client, we have reviewed the Staff Report prepared for Agenda Item No. 13 for the City Council's April 3, 2019 meeting, to (1) adopt of the Development Impact Fee Update Study prepared by Willdan Financial Services and dated January 31, 2019 ("Nexus Study") and (2) adopt a resolution "updating the City's select Development Impact Fees." We have also preliminarily reviewed the Nexus Study.

To be clear, and what the Staff Report fails to simply state, the proposed fee "update" to "select" Development Impact Fees proposed for adoption are in fact, substantial fee increases that include for single family dwellings, increases for public facilities from \$552 to \$3638, for water from \$3,902 to \$8,914, and for parks from \$5,790 to \$7,201 (the originally proposed increase based on the Nexus Study was to \$14,402). Traffic impact fees will increase from \$2,006 to \$3,107.

Also omitted from the Staff Report and Nexus Study is a direct comparison of the total proposed fee amounts and maximum justified fee amounts, against the current fees, thereby minimizing the effect of the proposed actions. Significantly, the Nexus Study purports to justify maximum increases of even more, reflecting an increase above current fees by 38% for single family dwelling units and 28% for multi-family dwelling units. The total maximum residential fee justified by the Nexus Study is \$53,405 for a single family dwelling unit, \$41,551 for a multi-family dwelling unit, and \$35,313 for a senior/downtown/accessory unit.

We write to respectfully request that you postpone this item until such time as this council, all affected stakeholders and members of the public have had a meaningful opportunity to closely

examine the legal adequacy of the justification for the fee increases provided by the Nexus Study and as necessary, require additional data and analysis. In light of the current housing crisis, it is vital that the City also evaluate the long-term effect the proposed fee increases will have on the feasibility of developing any new housing as envisioned under the General Plan, and on the ever-increasing costs of existing housing. When combined with the recent increase in Below Market Rate requirements, which now require 15% (up from 8%) of residential projects to be affordable units, and the increase in the In-Lieu Housing Fee from \$12.92 to \$19.70 per habitable square foot of residential building area of market-rate housing (also ignored in the Staff Report), the proposed development impact fee increases will have a devastating impact on the ability to develop any new housing whatsoever.

As summarized below, it is clear from even a preliminary review of the Nexus Study that it does not adequately establish and evidence an equitable relationship between the services and facilities to be funded by the proposed fees and the impacts resulting from future development, and therefore, does not satisfy the requirements of the Mitigation Fee Act, Government Code Section 61000 *et seq.*

The legal requirements for the enactment of development impact fees are set forth in the Mitigation Fee Act and were established by the Legislature specifically “in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.” (*Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 691.) To increase development impact fee amounts, the Mitigation Fee Act requires the City to satisfy all of the following requirements: (1) Identify the purpose of the fee; (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified; (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

First, the Nexus Study lacks basic information to support the requisite need for the proposed fees. More specifically, the Nexus Study does not adequately identify the new facilities and facility improvements to be funded from the fee increases, and demonstrate that such facilities and improvements will be required as a result of new development. For example, the parks fee analysis does not specifically identify the 40.40 acres of parkland to be acquired improved to justify the fee. In addition, the planned facilities listed in Table 3.3 of the Nexus Study are described as those planned through the 2035 planning horizon but the Nexus Study fails to establish that the additional facilities and improvements are required to accommodate future growth. It appears to assume, without any support, that existing facilities have no additional capacity to accommodate growth.

At a minimum, the Nexus Study must be supplemented and revised to identify the current and projected level of service for each public facility and how the additional facilities or improvements will be needed to accommodate future growth. This should be done by quantifying the projected burden that new development will place on the City's infrastructure, and allocating the costs of providing the needed public services between the existing and new populations

Second, it is not clear that the Nexus Study utilizes accurate growth projections to serve as the basis of the City's anticipated future public facilities and infrastructure needs. The Nexus Study appears to rely on imprecise data to derive population and land use assumptions. Without

additional supporting information, and evidence of consistency with the City's existing plans, the City's speculative determinations regarding future growth cannot support the required finding of the anticipated need created by new development. The drastic increases purportedly justified by the Nexus Study, warrant a closer examination of the assumptions relating to residential development densities, land uses, and populations.

As a practical matter, while the Nexus Study is generally based on the projected development to 2035 under the General Plan, the effect of the fee increase will essentially render those projections unachievable—particularly when combined with the recently increased BMR requirements—and exacerbate existing impediments to housing development, contrary to every statewide and regional policy and mandate on housing.

Finally, we note that due to the lack of outside sources to fund the operation and maintenance of the new parks, the park impact fee as initially proposed was reduced by half. The Nexus Study indicates that non-fee funding is also needed for Public Facilities and yet no corresponding reduction appears to be proposed for the proposed Public Facilities fee. Once adopted, the Nexus Study presumably will provide the basis for further increases up to the maximum amounts established therein and yet it is not clear when, how and on what basis the City may adopt further increases.

Accordingly, we urge the council to postpone its consideration of the proposed increase in development impact fees to allow additional time to ensure the legal adequacy of the Nexus Study.

We appreciate your time and consideration, and look forward to providing detailed comments once we have had an opportunity to fully evaluate the Nexus Study.

Very truly yours,



Kristina D. Lawson

KDL:rsc

Attachment 2

ROBIA S. CRISP
SENIOR COUNSEL
DIRECT DIAL (415) 995-5806
DIRECT FAX (415) 995-3455
E-MAIL rcrisp@hansonbridgett.com



August 20, 2019

VIA EMAIL AND U.S. MAIL

Michelle Bigelow, MMC, CPMC
Records Manager
Morgan Hill City Clerk's Office
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Public Records Act Request

Dear Ms. Bigelow:

Pursuant to the California Public Records Act, Government Code Sections 6250 *et seq.*, we hereby request copies of the following records and writings relating to the proposed update to the City's Development Impact Fees to the extent they are within the possession, custody or control of the City of Morgan Hill ("City"):

1. Any and all correspondence, memoranda, email communications, and other writings prepared, owned, used, referenced or retained by the City relating to the Development Impact Fee Update Study prepared by Willdan Financial Services and dated January 31, 2019 (the "Nexus Study").
2. To the extent not included in Item No. 1 above, any and all correspondence, memoranda, email communications, and other writings prepared, owned, used, referenced or retained by the City identifying the new facilities and facility improvements to be funded from the fee increases, including the most recent and final versions of (a) the City's Public Safety Master Plan, (b) Utility Master Plan documents, (c) Bikeways, Trails, Parks, and Recreation Master Plan and (d) Storm Drainage Master Plan.
3. To the extent not included in Item Nos. 1-2 above, any and all correspondence, memoranda, email communications, and other writings prepared, owned, used, referenced or retained by the City relating to the planning and cost estimate for a third fire station.

For purposes of this request, references to the City include the City Council, Planning Commission, all City departments, elected or appointed officials, staff, employees, contractors, consultants, and agents.

In addition, "writings" is defined in Section 6252(g) of the Public Records Act as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols,

or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”

If you require clarification of this request or have any questions about the nature or scope of this request or whether particular records and information in the department's possession are responsive to this request, we request your assistance to identify records and information that are responsive to this request per Government Code section 6253.1(a).

If you do not agree that the documents sought in this letter are required to be produced as public records pursuant to Government Code section 6250 et seq., please identify the applicable exclusion or exception to the Public Records Act that you believe applies to this request.

Our preference is to receive copies of the records electronically by e-mail or on a CD. However, if electronic copies are not available on a ready and cost-efficient basis, paper copies are hereby requested. We agree to pay the City at a rate of 10 cents per page for the direct costs of duplication pursuant to Government Code section 6253(b).

We look forward to receiving your response within the 10-day period required by Section 6253(c) of the Public Records Act.

Should you have any questions or comments, please do not hesitate to contact me. Thank you in advance for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Robia Crisp".

Robia S. Crisp

RSC

cc: Kristina Lawson, Esq.

KRISTINA D. LAWSON
PARTNER
DIRECT DIAL (925) 746-8474
DIRECT FAX (925) 746-8490
E-MAIL klawson@hansonbridgett.com



Item # 14

**AGENDA DATE: 09/04/19
SUPPLEMENT # 2**

September 4, 2019

VIA ELECTRONIC MAIL

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larry.carr@morganhill.ca.gov

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rene.spring@morganhill.ca.gov
john.mckay@morganhill.ca.gov

Honorable Mayor Constantine
and Members of the City Council
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

**Re: Request for Continuance; September 4, 2019 City Council Agenda Item No. 14:
Resolution Adjusting Select Development Impact Fees**

Dear Honorable Mayor Constantine and City Councilmembers:

We are writing to follow up on our letter submitted to you yesterday afternoon, to reiterate the need for a continuance of Item No. 14 for the proposed increase in development impact fees which appears on the agenda for your meeting this evening. The Finance Director describes the proposed fee increase as "significant in both dollar and percentage terms" in his memorandum to the City Council dated today, and stakeholders resoundingly agree that the proposed increase will significantly affect the feasibility of creating new housing in the City.

Yet, at 11:49 am today, roughly seven hours before the scheduled hearing for an increase in impact fees, we received an email from City staff transmitting a first set of documents purportedly responsive to our August 20, 2019 request for records relating to the proposed fee increase. The documents appear to include hundreds of pages which cannot reasonably be reviewed and analyzed in the mere hours that remain before tonight's meeting. Frustratingly, all of these documents were in the City's possession and could easily have been provided last week in response to our formal records request, or even earlier in response to our numerous informal communications with City staff regarding the scheduling of this matter for City Council review.

Where outstanding questions remain regarding the adequacy of the Revised Nexus Study, the City Council should not rubber stamp the proposal over community and stakeholder concerns. We urge the City Council to continue this item until such time as the City, stakeholders and other members of the public have the information necessary to fully evaluate the justification for the fee increase and its potentially devastating long-term impacts on housing development.

Honorable Mayor Constantine and Members of the City Council
September 4, 2019
Page 2

We appreciate your time and consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kristina D. Lawson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kristina D. Lawson



Appeal of RDCS Allotment Distribution



September 4, 2019 Item #16

Appeal of RDCS Allotment Distribution

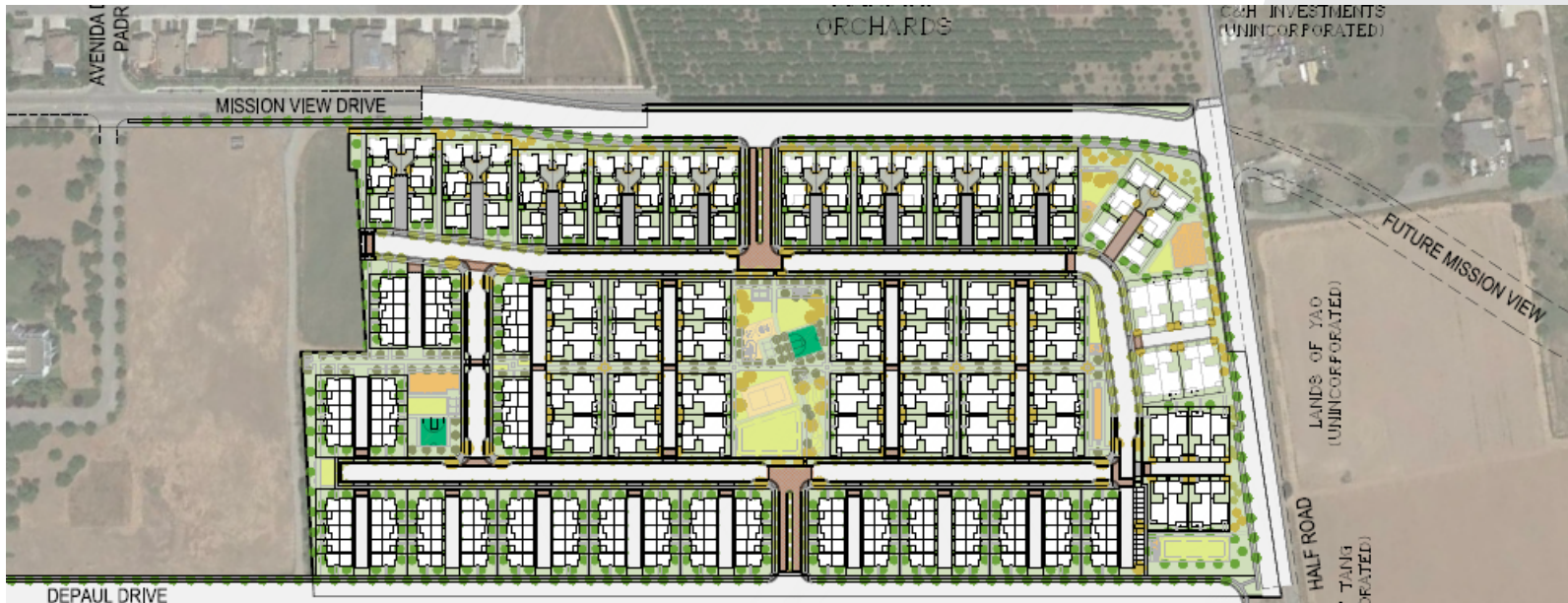
Planning Commission RDCS Award Fiscal Year 2020/2021 July 23, 2019

Project	Allotment Award
On-Going	
RDCS2016-0015 Cochrane-Borello	25
RDCS2017-0012 E. Dunne-Young	15
Open/Market Competitors	
RDCS2019-0004 Monterey-Dobkin	34
RDCS2019-0005 Monterey-Lucky Shing	24
RDCS2019-0007 Spring-Giancola	12
RDCS2019-0002 Llagas/Sabini-Strolata	1
RDCS2019-0008 Dakota-Dunne	3
RDCS2019-0003 Tennant-Osito Holdings	11
Total	125

504 Allotments were requested

Appeal of RDCS Allotment Distribution

Appellant Project



RDCS2019-0006: Half-Dividend (Formerly Brookfield)

Final Score: 163

Request: 246 Allotments

Build-out: 247 units

Appeal of RDCS Allotment Distribution



Planning Commission Review

- Not a high scoring project
- Multiple applicants-various designs
- Plan presented likely to change substantially
- Plan is designed within the lower density range
- Site should maximize density to address housing needs
- Score can be improved to better align with General Plan goals
- Did not want to take allotments from higher-scoring project to award to the appellants project
- Appellant did not want to transfer allotments from another project in the competition to the Half-Dividend project

Planning Commission did not award allotments

Appeal of RDCS Allotment Distribution



Multi-Year Decision Findings

Planning Commission could not make findings to grant multi-year awards:

- The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing
- The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development

Appeal of RDCS Allotment Distribution



Multi-Year Decision Findings (con't)

- The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases
- An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs

Unable to commit future competition allotments to projects given legislative and RHNA uncertainty

Appeal of RDCS Allotment Distribution



Appellant Request

- RDCS award as requested in project application
- Original request was multi-year (246 allotments)

Appeal of RDCS Allotment Distribution



Recommendation

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt Resolution denying the appeal and reaffirming the distribution of the RDCS building allotments FY 2020-21

Questions?



Toll Brothers

AMERICA'S LUXURY HOME BUILDER®

Via Email

September 3, 2019

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

Subject: September 4, 2019 City Council Meeting
Regarding Item #16 RDSC Planning Commission Appeal

Honorable Mayor and City Council Members:

Toll Brothers (Toll), owner and developer of Borello Ranch Estates, formally known as San Sebastian Estates is writing in response to the subject Planning Commission RDSC appeal.

As the Council knows, Toll purchased the Borello property in 2016 in reliance of the Measure C RDSC allocations in place at that time. Toll invested millions of dollars in reliance of these allocations and its vested entitlements. Subsequently, Morgan Hill adopted Measure S which identified certain projects as "Ongoing" projects under Measure C that were "grandfathered" with 25 allocations per year. Notwithstanding the limited allocations provided under the Measure S for ongoing allocations, Toll did not object at that time and relied on this new allocation to continue its significant investment. Each year Toll goes through the requisite process to establish its compliance with the RDSC and secure its allocations so that it may complete the buildout of the Borello Estates project in accordance with its Development Agreement.

Although Toll is in favor of new market rate housing, it respectfully requests the City Council to reject the subject appeal should it reduce Toll's 25 allocations.

Sincerely



Richard M. Nelson
Division President

Policy Direction on Building Electrification



POLICY CONSIDERATIONS



- What level of Reach Code or other restriction should the City implement to reduce or eliminate the combustion of natural gas in new development?
- Should the City pursue a “Retrofit-at Resale” ordinance or other requirement to reduce or eliminate the combustion of natural gas in existing buildings?



WHY



- Climate Crisis is real
- Electricity delivered by SVCE is now decarbonized...making natural gas emissions account for about one-third of all local greenhouse gas emissions
- Greatest opportunities for improvements are present at the time of initial construction
- Addressing existing buildings will be a long difficult journey....yet it has to start somewhere

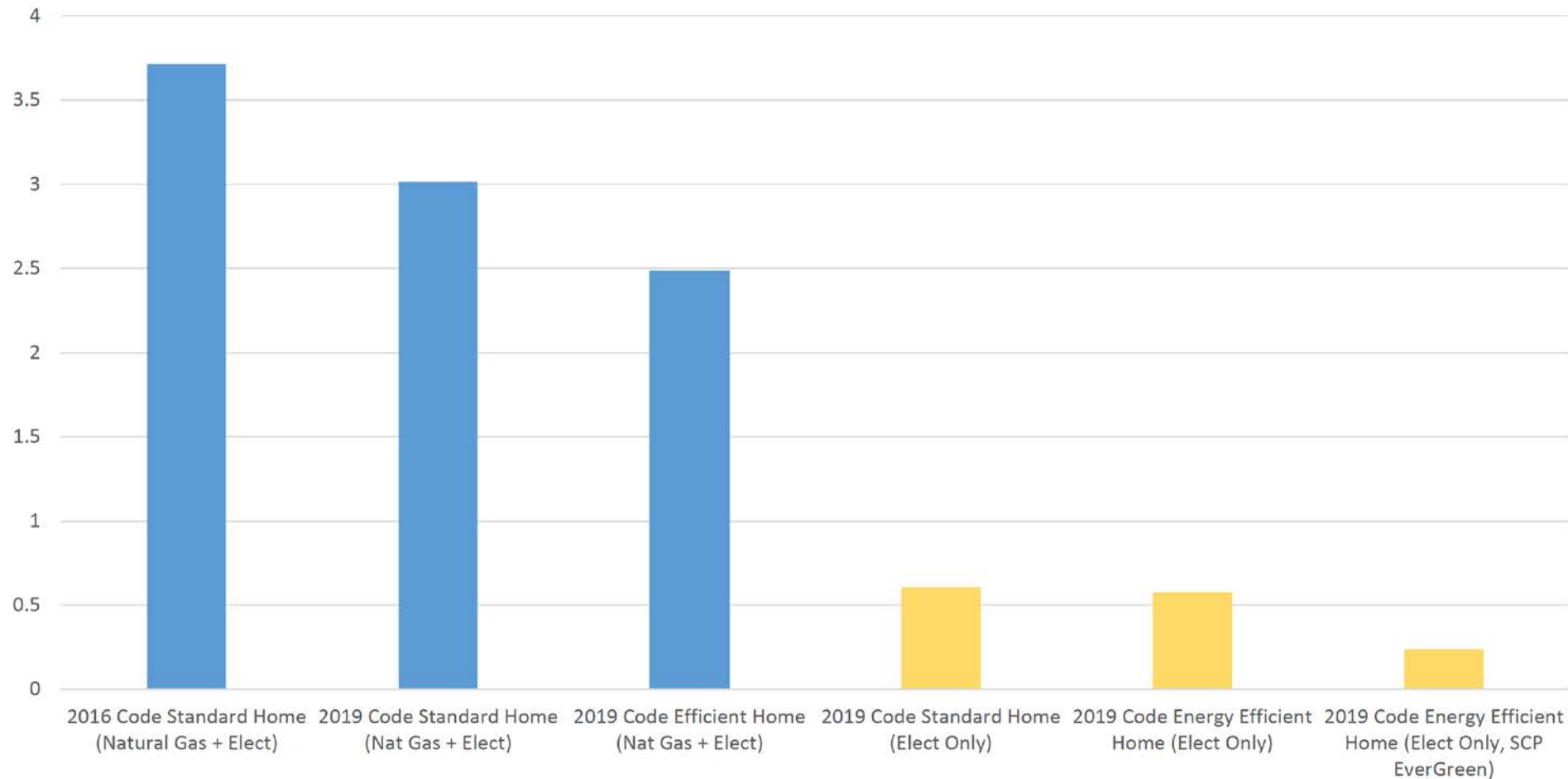
ADVANTAGES OF ELECTRIFICATION



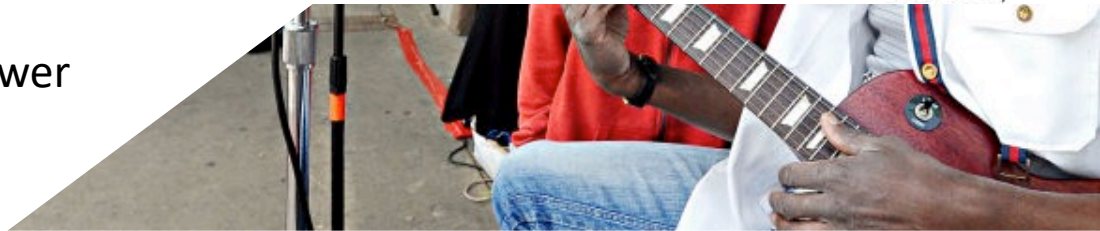
- Cleaner and Greener
- Reduced cost of construction
- Potential for property owners to produce their own energy
- Better indoor air quality
- Elimination of gas leaks and fires



Yearly Per Home Emissions (MT CO₂e)



Slide provided by Sonoma Clean Power



Costs of Building All Electric Homes Versus Homes with Gas



Required Measure	Average Cost versus Gas Appliance
Heating/Cooling (Heat Pump)	\$221 in cost savings
Water Heating (Heat Pump Water Heater)	\$0 in cost savings
Dryer (Electric)	\$0 in cost savings
Cooking (Induction)	\$0 in cost savings
Electric Service Upgrade	\$600 in additional costs
Gas Infrastructure	\$6,550 in cost savings
Total Costs	\$6,171 in cost savings



Slide provided by Sonoma Clean Power
Source: California Energy Codes and Standards
Cost-effectiveness Study - Low-Rise Residential



OPTIONS FOR NEW DEVELOPMENT



- Reach Code Light
- Reach Code Heavy
- Natural Gas Ban /
Reach Code Heavy



PROGRAM FOR EXISTING DEVELOPMENT – RETROFIT AT RESALE ORDINANCE

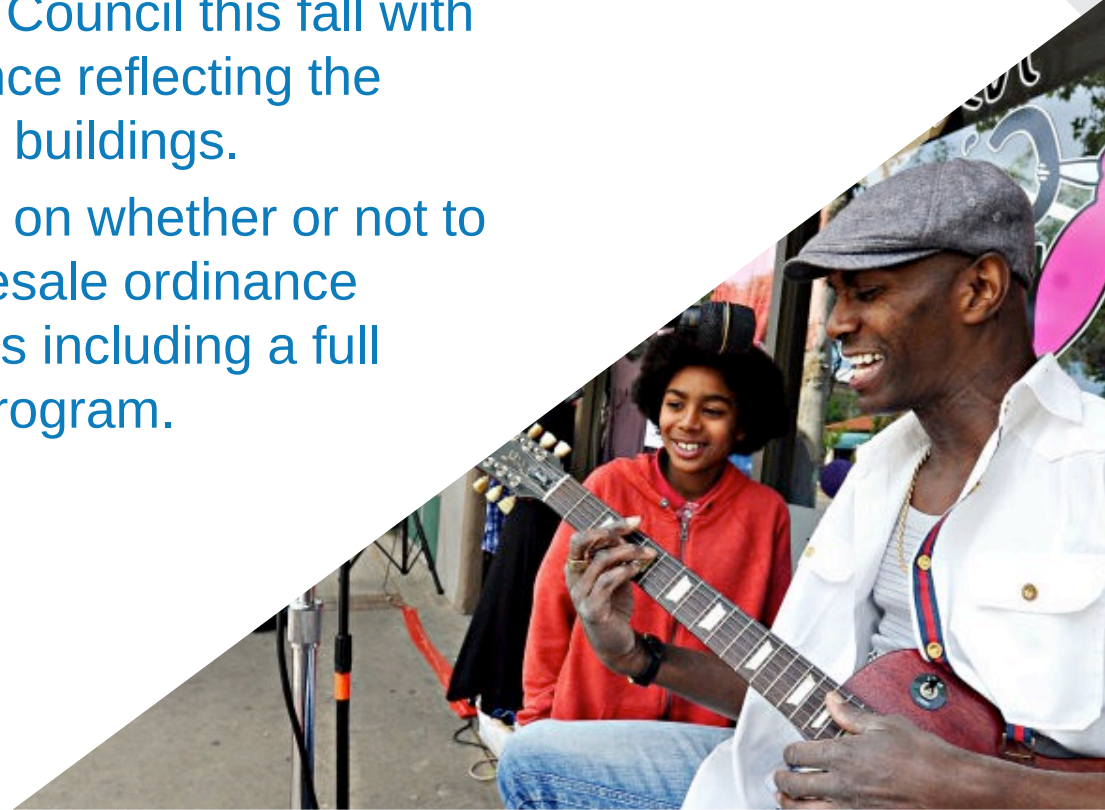


- Notify now – but not effective until 2030
- Focus on water and space heating
- Establish advance deposit system
- Institute safeguards



RECOMMENDATIONS

- Prioritize the options and direct staff to convene one or more engagement sessions with community stakeholders to further refine the ideas for an electrification program for new buildings.
- Direct staff to return to the Council this fall with an implementation ordinance reflecting the Council's priorities for new buildings.
- Provide staff with direction on whether or not to proceed with a retrofit at resale ordinance impacting existing buildings including a full community engagement program.





CITY OF MORGAN HILL



Healthier Kids Foundation
4040 Moorpark Avenue, Suite 100
San Jose, CA 95117
Phone: 408.564.5114
Fax: 408.326.2711
www.hkidsf.org

August 23, 2019

Chris Ghione
Community Services Director
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Year-End Report on Fiscal Year 2018-2019 City of Morgan Hill Funding of Community Outreach to Enroll Uninsured Morgan Hill Children into Health Coverage

Dear Chris,

On behalf of Healthier Kids Foundation's health coverage enrollment program, I am pleased to provide the City of Morgan Hill with a year-end report on the status of our efforts to identify uninsured Morgan Hill children and assist them with enrolling into subsidized health coverage.

Health Coverage Enrollment

Between July 1, 2018 and June 30, 2019, Healthier Kids Foundation successfully identified 30 uninsured Morgan Hill children. Of the 30 children identified, 17 have successfully enrolled into a health coverage program. Three children are still in the process of applying for and enrolling into health coverage; and the 10 remaining children were identified as having no health insurance, provided with all the information to apply, and assisted with processing their application. However, when it came to confirming the completion of the process, Healthier Kids Foundation could no longer reach them by phone. During the 2018-2019 year, many families in the Morgan Hill area were resistant to insurance enrollment services due to fear from the current political climate.

Community Outreach

While the City of Morgan Hill provides funding for .33 FTE Program Coordinator to focus on the Morgan Hill community, Healthier Kids Foundation provided additional staff to assist with building relationships among community-based organizations and schools. Healthier Kids Foundation staff conducted community outreach to the following organizations:

- Morgan Hill Values Youth Meetings
- Morgan Hill CABB
- Cultural Center
- LATI event
- Boys and Girls Club El Toro
- Latin Concert
- Morgan Hill Summer Fun in The Park
- EAH Housing and Voices Academy
- Learning and Loving Center
- P.A. Walsh Food Distribution
- Learning and Loving Center
- Morgan Hill Unified School District
- Morgan Hill Library

Healthier Kids Foundation's outreach efforts in Morgan Hill is primarily centered on establishing and maintaining a presence among and within the Morgan Hill community. Our South County Program Coordinator, Maria Padilla, has been a constant figure at Morgan Hill youth collaborative meetings and community gatherings. She assisted with the planning of and advocacy for the Morgan Hill

Healthier Kids Foundation • Board of Directors

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Values Youth Fair, the LATI's Annual Community Event, and was an MC for the Latin Concert. Maria has created strong community relationships and has become a true advocate for children in the Morgan Hill community.

Leveraged Services

While staff are working to identify uninsured children, Healthier Kids Foundation was also able to work closely with Morgan Hill Unified School District and provide hearing, dental and vision screening services to their students.

Between July 1, 2018 and June 30, 2019:

- 2,985 Morgan Hill children were screened for undetected hearing issues
 - o 5% of kids screened identified with a potential hearing problem
 - o 117 kids identified with a problem received appropriate treatment with the help of a Healthier Kids Foundation case manager
- 2,928 Morgan Hill children were screened for undetected dental issues
 - o 23% of kids screened identified as having one or more dental problems
 - o 411 kids identified with a problem received appropriate treatment with the help of a Healthier Kids Foundation case manager
- 2,921 Morgan Hill children were screened for undetected vision issues.
 - o 9% of kids screened identified as having a potential vision problem
 - o 180 kids identified with a problem received appropriate treatment with the help of a Healthier Kids Foundation case manager

Healthier Kids Foundation case managers provide follow up to all parents whose child's screening result indicates a potential issue in order to assist the child with accessing the appropriate treatment. Additionally, Healthier Kids Foundation assists children with finding a dedicated physician, dentist, or optometrist so that they may access regular, preventative, health services. Healthier Kids Foundation is pleased to bring these additional services to the Morgan Hill community.

Preventative care only works if it's acted upon. A vision screening is only effective if the child diagnosed with a vision problem actually gets glasses and wears them. Now, teachers and staff will be able to view the child's result and see the outcome of their follow up. This will allow for teachers and staff to reinforce the importance of obtaining treatment and following through with doctors' recommendations, they will be able to remind a child that they should be wearing their new glasses in class and other things of that nature.

Healthier Kids Foundation is extremely grateful to the City of Morgan Hill for its investment in our efforts. Healthier Kids Foundation staff are committed to assisting Morgan Hill children with obtaining health coverage and services and look forward to reporting on our efforts.

Do not hesitate to contact me should you have any questions or need additional information. I can be reached by email (laura@hkidsf.org) or by phone (408.564.5114 x220).

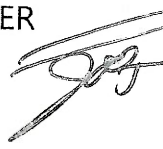
In community spirit,



Laura Clendaniel
Development Manager
Healthier Kids Foundation

PUBLIC COMMENT: NEXT MR. REGULAR, SPECIAL, STUDY, SPECIAL, PUBLIC WORKS, PRIVATE RETIREMENT, AND/OR "MOBILITY MEMBERSHIP" of UTA & C&E.

FOLLOW-UP TO YOUR LATEST ON CAHSRA'S BULLET TRAIN: IT'S DEJAVU YOGI ALL OVER AGAIN



From: Joseph Patrick Thompson (translaw@pacbell.net)

To: bholtzclaw@newsmedia.com; nmixter@newsmedia.com; rtdillon@garlic.com; shawna.freels@ci.gilroy.ca.us; ROLAND.VELASCO@CI.GILROY.CA.US; peter.leroe-munoz@ci.gilroy.ca.us; fred.tovar@ci.gilroy.ca.us; dion.bracco@ci.gilroy.ca.us; cat.tucker@ci.gilroy.ca.us; marie.blankley@ci.gilroy.ca.us; carol.marques@ci.gilroy.ca.us; rich.constantine@morganhill.ca.gov; mgr42@charter.net; gary@custom-1.com; ehoward1965@gmail.com; president@gilroyedc.org; askmike@garlic.com; sbcsuper@supervisor.co.san-benito.ca.us; info@sanbenitocog.org; onemorejones@yahoo.com; sallybettencourt@gmail.com; donpatloe@att.net; carl@reformcalifornia.org; jon@hjta.org

Date: Monday, July 15, 2019, 11:06 AM PDT

Dear Barry,

Here's follow-up in reply and rebuttal to your latest publication on CAHSRA's Bullet Train. It's been said before, but now more than ever needs to be resaid. What's wrong with the CAHSRA's Bullet Train? Everything.

I'm grateful to the expert assistance of Mr. Tom Rubin, former #1 top guy at L.A.'s transit agency. I previously submitted the first paper to Gilroy's then City Council, and to others. But, there are none so blind as those who refuse to see. Who's getting rich on this boondoggle? If we're already robbing gas & diesel taxes to fund already existing boondoggles, rail and highway, including BART, Caltrain, SMART Train, ACE Train, Lite Rail, County Transit, Dial-A-Ride, Paratransit, etc., run by unelected Directors appointed to their office at the transit agencies, why do we think that motorists can pay more, and cheat us out of the taxes we're paying for highways, streets and roads?

As I've said since 1996, to Senator Kopp, a/k/a "father of the Bullet Train," who turned against it after he saw what CAHSRA was doing, this is bad public policy, and unsound and unsustainable transport policy.

Why don't we listen to independent, unbiased expert opinion on this Trojan Horse Monstrosity? Here follows what our local leaders ought to be saying to CAHSRA in defense of the taxpayers in their cities and counties.

Joseph P. Thompson

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past President 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Charter Member, SBCCOG Citizens Rail Advisory Committee

Charter Member, SBCCOG Citizens Transit Task Force

Follwing from Thomas A. Rubin:

TAR: I'm happy to be of service.



As to the document you are referring to, I believe this is what you had in mind, from 2008:

The California High-Speed Rail Proposal: A Due Diligence Report

Received
City of Morgan Hill

JUL 22 2019

City Clerk

The California High-Speed Rail Proposal: A Due Diligence Report

Policy Study 370

Here is an update from 2013:

https://reason.org/wp-content/uploads/files/california_high_speed_rail_report.pdf

Here is the general Reason transportation site with many other papers on HSR, including many more recent:

[Mass Transit, High-Speed Rail, Light Rail, Buses and More](#)

Mass Transit, High-Speed Rail, Light Rail, Buses and More

No, I wasn't the author of any of these. I did do a detailed fact check and peer review of the first paper.

This courtesy of Thomas A. Rubin. - jpt

RE: THANK YOU!

From: Thomas A. Rubin (tarubin@earthlink.net)

To: translaw@pacbell.net

Date: Monday, July 15, 2019, 09:33 AM PDT

TAR: I'm happy to be of service.

As to the document you are referring to, I believe this is what you had in mind, from 2008:

<https://reason.org/policy-study/the-california-high-speed-rail/>

Here is an update from 2013:

https://reason.org/wp-content/uploads/files/california_high_speed_rail_report.pdf

Here is the general Reason transportation site with many other papers on HSR, including many more recent:

<https://reason.org/topics/transportation/mass-transit-and-light-rail/>

No, I wasn't the author of any of these. I did do a detailed fact check and peer review of the first paper.

I enjoy Napa and wine country tours, but I'm a teetotaler – no objections to responsible consumption, just never developed a taste for it. If you are ever hosting a group on such a tour, let me know – or we can come up with another excuse to get together.

Have fun, and keep the faith.

Tom Rubin

VTA: CONVENED INSOLVENT - BORN BANKRUPT
 GET GOVERNMENT OUT OF THE TRANSPO-BUSINESS
 TO

THE DISPATCH

GILROY

10 years later: BANKRUPT EVERY DAY!

WEEKEND

www.gilroydispatch.com

VTA on the brink of bankruptcy

► Committee explores a range of solutions, including taxes, to fund struggling transit agency

By JONATHAN JEISEL

Staff Writer

GILROY — The county's transit agency is at a financial crossroads, and Santa Clara County citizens and businesses could potentially face decisions about new taxes — or whether to borrow against existing taxes in the short-term for a new purpose — to help remedy the financial quagmire.



* BAILED OUT BY TAXPAYERS — BAD PUBLIC POLICY

County Supervisor Don Gage

"What it will really boils down to is, 'Do people in the valley really want a transit system, and what do they want it to look like?'"

Officials with the Santa Clara Valley Transportation Authority say they face an estimated \$160 million annual deficit over the next 20 years and warned that the agency will run out of money within two years' time unless dramatic steps are taken. That budget hole is forcing officials to consider major changes to how the agency's buses and light-rail trains are funded — and a centerpiece question at the moment is a search

Nearly 85 percent of the VTA's operating budget is comprised of sales-tax revenues, which tend to be volatile and fluctuate dramatically along with the economy. With the current downturn, agency revenues have dropped 33 percent in two years after seven consecutive quarters of declining sales taxes. That's a bad drop, stressed VTA spokeswoman Dina Braun. "It's tough for any organization," she said. So far, in response the agency has

Please turn to VTA, A10

AUG - 7 2019

City Clerk

THAT + SOVIET SOLUTIONS DON'T WORK!
 SCARE + COGS BANKRUPTCY TOO.
 "Dad WAS CATHARIC OF VTA WHEN VTA WENT WEST IN NATION"
 FROM H.I.T. STORY OF ALL US TRANSIT

PUBLIC COMMENT - NEXT MEETING. J.P.T.

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■ **Transportation Agency**

VTAs Stuck in Spending Gear

It's time for the decade-old Valley Transportation Authority to learn to live within its means. And that means those leading it, its board of directors, its general manager, chief administrative officer and chief financial officer, need to take responsibility for the financial mess the agency is in.

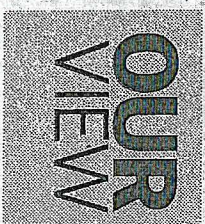
How? By taking a realistic look at its \$340 million annual budget, the very few passengers - 135,000 riders each day - and its projected \$2.8 billion deficit for the next three decades. VTA leaders need to immediately draft a budget that makes sense. It will take real leadership, leadership that has been nonexistent.

The VTA needs to spend only what it has on real transit needs and not wants, like proposed expensive light-rail extensions around the county and the buffoonish \$4.7 billion BART-to-San Jose project.

The critical March independent audit by the Philadelphia-based HayGroup, at a cost of \$500,000, makes the same points. VTA General Manager Michael Burns took the proactive step to get the review. Now what? Will the VTA behave like a private sector company in trouble and cut costs and adopt a realistic budget?

Remember, some of the same concerns raised by the latest audit were pointed out in 2004, when the Santa Clara County's Civil Grand Jury recommended suspending the BART-to-San Jose project and disbanding the VTAs board of directors. The board thumbed their noses at all of the grand jury's recommendations.

Most damaging in the HayGroup audit are the findings related to how the agency has forecasted its 30-



year economic outlook, erroneously relying on money generated from the 2000 passage of a half-cent sales tax. The audit found that in light of last year's failed half-cent sales tax proposal and no other incoming revenues, the VTA cannot build and operate the promised transit improvements.

When the agency last year again asked voters for more money - a half-cent instead of a quarter-cent sales tax increase - it failed.

Now Burns has welcomed a transportation-only tax measure in the November 2008 ballot.

Yet even with rising gas prices, ridership is down.

So, while it's a good thing that the agency is questioning the logic behind its bus service, eliminating some routes and consolidating others, the truth is that what's needed is a magnitude 8.0 shake-up that would essentially re-invent the VTA. And despite all the super critical audits and obvious flaws, it's just not happening. Voters should remember that whenever VTA asks you for more money out of your paycheck.

■ **HOW TO REACH THE VTA**

■ Santa Clara County Supervisor Don Gage, 299-5010, don.gage@bos.co.santa-clara.ca.us

■ Morgan Hill City Councilman Greg Sellers, 779-7259, greg.sellers@morgan-hill.ca.gov

■ VTA General Manager Michael Burns, 321-5559 or michael.burns@vta.org.

CGS, 720?

Comment ()
Call th

A6 FRIDAY, JUNE 6, 2008

MORGAN HILL TIMES

LOCAL

VTA has disdain for taxpayers

Dear Editor,

It is refreshingly honest to see a VTA director admit that they have disdain for taxpayers. Their track record since VTA's insolvent inception reflects disdain at unprecedented levels, and unacceptable ones, too.

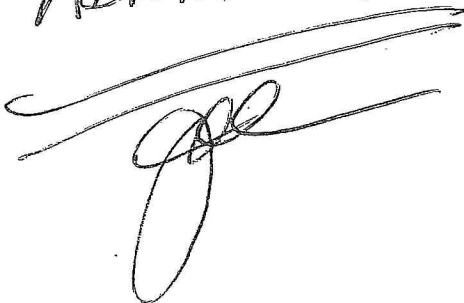
If VTA was a horse, then we would shoot it. Politician transport is the problem, not the solution. If we wanted socialist transport, then we would not have taken the capitalist route. Can VTA's directors, disdain and all, make VTA work? Could Lenin? Trotsky? Stalin? VTA only keeps going because of massive blood transfusions from taxpayers to VTA, increasing each year, but for how long? At what point do you pronounce the horse fatally ill? I much prefer openly admitted "disdain" to "base hypocrisy" as Lincoln so described VTA's usual policy toward the taxpayers. At least then we have some honesty from our elected officials, even if they are not elected to VTA, but rather, only appointed. As the Supreme Court of Virginia said in February, such a government is unconstitutional, and such a government's taxes, fees and bonds are "null and void." Same thing goes for VTA.

CAVEAT VIATOR.
JOE THOMPSON, GILROY

VTA =
COG

ALSO HAS
DISDAIN FOR
TAXPAYERS.

AT LEAST M.H.
COUNCILMAN
SELLERS
ADMITS IT.



KK - Did you READ LUS ANSWERS TO LUS
ONE LAST YEAR

JOSEPH P. THOMPSON

Attorney at Law
8339 Church Street, Suite 112, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

September 21, 2007

FAX (831) 636-4160
Honorable George Diaz, Chairman
San Benito County Council of Government
481 Fourth Street
Hollister, CA 95023

Re: Public Records Act Request

Dear Mr. Diaz,

Please refer to California Government Code provisions known as the Public Records Act (hereinafter the "Act"), Government Code §§6250-6270, which Act applies to the SBCCOG, and especially to §6250, which states, "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

Regarding Agenda Item #11 entitled "FY 06/07 Budget" on yesterday's COG meeting agenda, I hereby make the following request for public records under the Act:

1. What money does COG use to compile in its budget report under the topic "revenue"?
2. What percentage of COG's "revenue" comes to COG thru the collection of fares?
3. What percentage of COG's "revenue" comes to COG thru taxpayers' subsidies, regardless of the name or label applied to them, e.g., "grants"?
4. What expenses of COG are used to compute "farebox recovery" in COG's reports?
5. What expenses of COG are not used to compute "farebox recovery" in COG's reports?
6. What expenses of COG are used to compute operating expenses of County Transit?
7. What expenses of COG are not used to compute operating expenses of County Transit?
8. What percentage of seats are transported empty each day by County Transit buses?
9. How many vehicle miles per year are County Transit's buses operated with no passengers on board?
10. How much money does County Transit require from tax subsidies to transport each passenger?
11. Do you have written authorization from COG's Directors authorizing COG's staff to select the operator for County Transit bus operations? If so, please provide me with a copy of it.

Very truly yours,

JOSEPH P. THOMPSON

cc: COG Board of Directors
cc: SBC Board of Supervisors

Public Records Request

So if they Don't know why do we
give them our Money?

ECONOMIC HARM ON LOCALS TO BE INFLICTED BY CAHSRA'S INSANE BULLET TRAIN-- PUBLIC COMMENT: NEXT MEETING:

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: bholtzclaw@newsymedia.com; allcouncilmembers@ci.gilroy.ca.us; roland.velasco@ci.gilroy.ca.us;
askmike@garlic.com; fred.tovar@ci.gilroy.ca.us; peter.leroe-munoz@ci.gilroy.ca.us; cat.tucker@ci.gilroy.ca.us;
carol.marques@ci.gilroy.ca.us; dion.bracco@ci.gilroy.ca.us; marie.blankley@ci.gilroy.ca.us;
president@gilroyedc.org; ehoward1965@gmail.com; gary@custom-1.com; mgr42@charter.net;
rich.constantine@morganhill.ca.gov; sbcsuper@supervisor.co.san-benito.ca.us; info@sanbenitocog.org;
onemorejones@yahoo.com; sallybettencourt@gmail.com; rtdillon@garlic.com; donpatloe@att.net;
carl@reformcalifornia.org; jon@hjta.org

Date: Sunday, August 4, 2019, 08:22 AM PDT

Dear Barry,

Regarding the CAHSRA's insane plan and its insane planned Route in this Region, please publish UPRR's letter to CAHSRA informing them of the UPRR's superior property rights, and advising that the UPRR will not tolerate trespassers like CAHSRA. I previously sent your predecessor Mark Derry a copy of UPRR's letter.

So, if UPRR won't let CAHSRA trespass on its property, on, over, or under its property, then where do they plan to build their Frankenstein Monstrosity money-waster that will inflict great economic harm to local taxpayers, property owners, and small and very small business owners?

California voters voted for self-sufficient high speed rail, not another subsidy-dependent socialist supersized Amtrak or Caltrain. It is bad public policy to supplant free enterprise rail transport with USSR-style government owned rail transport. Gas tax increases to pay for the bad public policy decisions of our leaders is contrary to the best interests of the State and the Nation.

Capitalism is the preferred route for railroads as Lincoln concluded in 1864 when Granville Dodge, UPRR's top civil engineer, urged Lincoln to nationalize the UPRR. The lessons we've learned from Amtrak, Caltrain, and other taxpayer-dependent railroads ought to be recognized and admitted, rather than denied and ignored by our leaders.

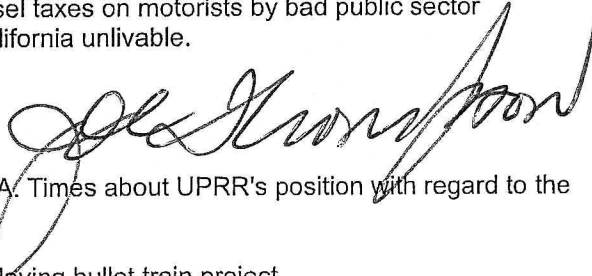
I repeat what I've said previously, and attach one of my letters to CAHSRA recommending sound public policy for rail transport. Our leaders ought to follow Lincoln's advice. Rejecting Lincoln's policy is unsound and unsustainable in the long run for America.

We cannot afford the bankrupt-from-conception public sector transit boondoggles that are already funded by gas & diesel taxes on motorists by bad public sector transit fiascoes which are making California unlivable.

Joseph P. Thompson
(408) 848-5506
e-Mail: TransLaw@PacBell.Net
PS:

Here's a recent Article from the L.A. Times about UPRR's position with regard to the CAHSRA's Bullet-in-the-Brain Train:

[Contractors claim Union Pacific is delaying bullet train project](#)





Contractors claim Union Pacific is delaying bullet train project

The most ambitious rail project of California's future is increasingly dependent on the cooperation of the very ...



MORSHED.LT3.pdf
75.7kB

JOSEPH P. THOMPSON
Attorney at Law
8339 Church Street, Gilroy, CA 95020
Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

January 5, 2010

Fax: 916-322-0827
Mr. Mehdi Morshed, Exec. Dir.
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Public Comment HSRA's Environmental Impact Report SF-San Jose-Gilroy-Merced

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's second (judicially-required) EIR for the San Francisco-San Jose-Gilroy-Merced Segment.

Identity of Author. I am a graduate of San Jose State University, and have done post-doctoral study of transportation law and policy at the Mineta Institute at SJSU. I write only for myself, and not on behalf of a client or organization, but merely to express my personal reply to the EIR for the segment that includes Gilroy, where I have practiced law for more than 30 years.

Background. I here refer to and incorporate by reference: (1) my letters to you dated 3/23/09 and 3/10/04; (2) letter dated 2/23/09, amended 3/13/09, from Mr. J.S. Jerry Wilmoth, UPRR; (3) Map CA-13, CA-17a&b, and CA-18, *Railroad Atlas of North America, California and Nevada*, pp. 18, 22-23; and Wendell Cox & Adrian T. Moore, *The California High Speed Rail Proposal: A Due Diligence Report*, Reason Foundation, Sept. 2008; Legislative Analyst's Office, *The High-Speed Rail Authority*, March 17, 2009 (see attached to my letter to you 3/23/09).

Summary. Lenin convinced his fellow countrymen that Marx & Engels were right, with Trotsky's help, and Stalin's "persuasion" tactics. Did that make his philosophy right? No. Just like Lenin, CAHSRA's proponents are wrong. You remind me of heroin addicts who refuse to admit their addiction. Revelations since the election show what a disastrous idea you have proposed for this sad State, dominated by radical socialists in our Legislature, the League of California Cities, and the California State Association of Counties, and the public transit agencies and their public-sector unions. I think that history will be just as kind to the CAHSRA's proponents as it's been to Lenin. The people of California will rue the day that the Trojan Horse was approved in the guise of the Bullet Train.

As I said before, "The crucial question facing us with HSR's proposal was concisely stated by the Honorable Norman Y. Mineta: "The crucial question in transportation today is: What should

government do, and what should it leave to others.”¹ The sound, sustainable answer to Secretary Mineta’s “crucial question” lies in the private sector; not in the public sector. With free enterprise as a foundation, high speed rail’s owners and investors can combine profitable freight revenue with losing passenger fares, rather than asking the maxed-out taxpayers of California for more tax subsidies for yet another public-sector passenger mode of travel.

Comment: Funding Source for Operations. The current proposal does not satisfy the requirements of sound railroading, while it adheres to the tax-dependent method of finance akin to Amtrak, Caltrain and urban mass transit, with only a very small fraction of the overall expenses paid for by the patrons. The underlying assumption that taxpayers can continue to pony-up the subsidies for more government-owned transport is wrong. History shows the proposal to be fatally flawed. All of the State-owned railroads in the Nation failed in 1837-1840. Lincoln knew personally about those failures, so when General Granville Dodge recommended to the President in 1864 that the government own the transcontinental railroad, Lincoln said “no.” His theory, which ultimately worked, was that private enterprise own the railroads, but that the government would aid in their construction. When the Nation’s railroads were nationalized during World War I, it only took 18 months before the government’s mismanagement had brought all our railroads to a screeching halt. So, Congress reversed its previous decision and de-nationalized our railroads. In 1970 during debates in Congress on formation of the National Railroad Passenger Corporation (Amtrak), some members promised that Amtrak “would be profitable in three years.” Amtrak has failed to break even, and requires ever-increasing tax subsidies to continue its operations. Our Nation paid dearly for Amtrak’s subsidies because on 9/11/01 we did have Amtrak, but we did not have adequate airport security.

The north-south tonnage flows in California, on Hwy. I-5, US 101, and Hwy. 99, represent a source of funding that could, in a private-sector model, duplicate and exceed taxpayers’ subsidies in the public-sector model as proposed in the EIR. The French government has announced that it will have Fedex freight transported by that nation’s HSR starting next year, so those with experience in operating HSR in Europe have apparently resorted to freight revenue as a source of funding. We could reduce air pollution, traffic congestion, and road and bridge support deterioration and maintenance expenses if we diverted some of that tonnage onto HSR. I have said this to the HSRA since before its creation when it was a Commission.

I believe that reliance on tax subsidies ought to be deemed unfeasible, given the tax/fee burdens already imposed on Californians by all levels of government, not to mention the even larger burdens which our generation is imposing on future generations.

Rather, the manner in which railroads were originally created, and funded, freight revenue combined with losing passenger fares, ought to be the funding formula upon which the HSR is created and maintained.

As the LAO’s Report states (page 5), the HSR service should “not require an operating subsidy.” A feasible “funding source . . . for future years . . .” (page 6, LAO’s Report) exists now and will exist into the future: freight revenue. As with freight moving in the bellies of airliners, HSR can transport freight, thereby decreasing air pollution because the fuel savings per ton/mile is about 75% compared with rubber tires hauling freight on concrete or asphalt. The profit made moving freight

¹Joseph P. Thompson, “ISTEA Reauthorization and the National Transportation Policy,” 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997).

can offset the losses sustained transporting passengers. Overnight shipments between Northern and Southern California can be transported without interfering with daytime, commute hours.

Comment: UP's Property Rights.

In addition to those aspects identified by Cox and Moore ("Reason Report"), the UP's Coast Main Line, which is part of its incomparable interstate railroad, and considered by many to be the best railroad in the whole world, if not in America, is entirely its to own, for its shareholders' benefit. The Nation's national security and interstate commerce justify the position paramount to lesser entities, the States, and local government, which the courts have repeatedly upheld on federal preemption grounds. A look at the Maps of UP's tracks in the SF Peninsula, San Jose, and South Bay Area show that the current HSRA proposal is impossible without UP's consent. Since UP has not given its consent (Mr. Wilmoth's Letter enclosed), the proposed route is not a legally possible route, even if the HSRA could find the tax subsidy money to operate it as currently proposed.

Conclusion. I believe that Secretary Mineta was right. However, HSRA's answer is wrong for California, and impossibly burdensome for its taxpayers in this and future generations. By following our predecessors' example, and having learned from their mistakes, we can have sound, sustainable HSR in California.

Caveat Viator!"

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

PUBLIC COMMENT

AGENDA DATE: 09/04/19
SUPPLEMENT # 2

From: [Genie Phirippidis](#)
To: [Rebecca Garcia](#)
Cc: [Michelle Bigelow](#); [Angie Gonzalez](#); [Irma Torrez](#)
Subject: Re: BMR Equity
Date: Wednesday, September 4, 2019 12:04:57 PM

Good Morning Rebecca!

Thank you so much for replying to my email.

As I mentioned in my message, I am unable to attend tonight's City Hall meeting.

I believe one of the items on the agenda that will be discussed is in regard to the BMR homes at Madrone Plaza and that currently if homeowners wish to sell their homes they would not benefit from the small amount of profits, if any, because of the current restrictions, and multiple loans that were attached to the original loan, etc.

I would like to see all the restrictions updated to help all of us BMR owners, should we decide to sell our BMR homes, can receive a greater amount of profits in order to be able to afford another home in the future.

Thank you,

Genie Phirippidis
18406 Ruby Lane
Morgan Hill, CA 95037
408-500-6776

On Sep 4, 2019, at 10:20 AM, Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov> wrote:

Good Morning,

I received your message regarding not being able to speak at Council on the BMR program this evening during the public comment period. Based on your message, you would like to share with the Council your support for trying to obtain greater equity from your Below Market Rate Home on Ruby Lane. I will pass along your message to the City Clerks.

Also, please feel free to reply to this email message with the exact message you would like shared with Council. Thank you!

Michelle and Angie can forward your message to the City Council.

Best,

Rebecca Garcia
Housing Manager

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

P: 408.310.4637

Rebecca.Garcia@morganhill.ca.gov

morganhill.ca.gov | [facebook](#) | [twitter](#)

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

The City has received inquiries and comments from BMR homeowners in the Madrone neighborhood, regarding their ability to change their agreements to increase their equity.

In response, the Housing team, including Julius Nyanda of Housekeys, have now held multiple meetings/calls with Mr. Bernstein, and accommodated him and the other Madrone Plaza owners once by going to City Council to recommend a minimum return on down payment several months ago. From Mr. Bernstein's perspective, that action to guarantee a minimum 10% annual return on down payment (assuming healthy market conditions) is not adequate.

Mr. Bernstein is requesting that the City allow the Madrone property owners to use a CPI index rather than the AMI (Area Median Income) index contained in their existing restrictions and affordability covenants to calculate the resale value of their homes so that they are afforded access to more equity. He cites the City's current BMR agreement for new properties, which uses CPI as rationale. The owner is trying to find a basis for requesting that the City re-draft a legally recorded document created by an affordable housing non-profit, to modify the purchase agreement.

Jeff Bernstein is one of 33 low-income homebuyers who purchased from South County Housing during 2008-2012. This was not a home delivered through the City's DeFacto inclusionary housing program in the RDCS, where developers create affordable units as a percentage of their larger project. This was a specific development created by South County Housing. Most of the purchasers had first mortgages that were under \$190,000. The mechanism used to create that low first mortgage included large amounts of deferred down payment assistance from multiple sources and state closing cost grants that are no longer available today.

In addition, the Madrone units circumstances were also a bit unique because the market collapsed due to the Recession just as these units were being sold and as a result brought market-rate homes in line with moderate-income priced homes being sold with no assistance. As stated above, this was a project developed by a non-profit housing company. The City provided a tiny layer of down payment assistance but did not design the project and/or its financing structure. The City has inherited the servicing of the units as part of its BMR ownership program because the units are part of the City's affordable housing legacy. There is no way to standardize these units into the City's current housing policy practice. This project bears no resemblance to any other project or group of deed restricted affordable units in the City. However, a modification as being requested for Madrone, if applied to all of our BMR units would decimate the City's housing program. The change would place most resale units out of the reach of new affordable owners.

While some of the Madrone owners want to receive more equity upon sale, the City's BMR program has never been an asset building program. It is an affordable living program that allows individuals/families to enjoy home ownership at a much reduced cost with lower mortgages and property tax benefits. The

program allows for a low, manageable, and stable mortgage payment, while being insulated from rental market uncertainty and average rents of \$3000 + in today's market.

In summary, the Housing Team does not recommend any further City Council action.



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, September 4, 2019 6:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is 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

SPECIAL MEETING

6:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

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 McKay

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

RECOGNITIONS

Rita Chavez Medina

PROCLAMATIONS

Proclaiming September 2019 as National Preparedness Month
Jennifer Ponce

Honoring Jacob's Heart Children's Cancer Support Services and Proclaiming September 2019 as
Childhood Cancer Awareness Month
Fatima Alabbad

PRESENTATIONS

Healthier Kids Foundation
Sunny Ochoa and Maria Padilla

September 4, 2019

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)

PUBLIC COMMENT SUPPLEMENT

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE CONSULTANT AGREEMENT WITH MAZE & ASSOCIATES FOR AUDIT SERVICES FOR THREE FISCAL YEARS

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Maze & Associates for the not to exceed amount of \$111,853 for audit services for three fiscal years.

2. APPROVE UPDATES TO THE PUBLIC ART INVENTORY

Recommendation:

Approve updated Public Art Inventory.

3. APPROVE AGREEMENT WITH CIVIC FOUNDRY LLC FOR INFORMATION TECHNOLOGY SERVICES

Recommendation:

1. Approve agreement with Civic Foundry LLC for Information Technology management for a not to exceed amount of \$180,000; and
2. Authorize the City Manager to execute and administer the agreement.

4. APPROVE STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR THE SHOE PALACE PROJECT LOCATED AT 745 JARVIS DRIVE (PORTION OF ASSESSOR PARCEL NUMBERS 726-30-012 & 726-30-013)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Shoe Palace Project located at 745 Jarvis Drive (Portion of APNs: 726-30-012 & 726-30-013); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

5. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - ALTIMIRA - TRACT NO. 10411

Recommendation:

1. Accept the Subdivision Public Improvements for Altimira – Tract No. 10411;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

6. AWARD MORGAN HILL LIBRARY ADDITION PROJECT TO SELDEN & SON

Recommendation:

1. Approve the Morgan Hill Library Addition Project plans and specifications;
2. Award contract to Selden & Son for the Morgan Hill Library Addition Project in the amount of \$1,985,800;
3. Authorize expenditure of construction contingency funds not to exceed \$198,580; and
4. Authorize the City Manager to execute and administer the construction contract with Selden & Son pending review and approval by the City Attorney.

7. AWARD CENTENNIAL RECREATION CENTER POOL DECK RESURFACING PROJECT TO FLEXGROUND SURFACES, INC.

Recommendation:

1. Award contract to Flexground Surfaces, Inc. in the amount of \$56,224; and authorize the expenditure of contingency funds not to exceed \$20,000; and
2. Authorize the City Manager to execute and administer that certain construction contract with Flexground Surfaces, Inc.

8. ADOPT RESTATED INTERNAL REVENUE SERVICES (IRS) SECTION 125 FLEXIBLE BENEFITS PLAN DOCUMENT FOR THE CITY OF MORGAN HILL

Recommendation:

1. Adopt resolution approving the City of Morgan Hill's Section 125 flexible benefits plan; and
2. Authorize the City Manager, or designee, to serve as the Plan Administrator.

9. ADOPT THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULE EFFECTIVE DECEMBER 29, 2019

Recommendation:

Adopt the Management, Professional, and Confidential Employees Resolution and corresponding salary schedule effective December 29, 2019.

10. ADOPT RESOLUTION APPROVING APPLICATION FOR PER CAPITA PROP 68 GRANT FUNDING

Recommendation:

Adopt resolution authorizing a grant agreement with the State of California.

11. RATIFY CITY POSITION ON PENDING LEGISLATION SB 266 PUBLIC EMPLOYEES' RETIREMENT SYSTEM: DISALLOWED COMPENSATION: BENEFIT ADJUSTMENTS

Recommendation:

1. Receive legislative correspondence in opposition of SB 266 Public Employees' Retirement System: disallowed compensation: benefit adjustments; and
2. Ratify City's position.

12. APPROVE THE JULY 17, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

13. APPROVE THE JULY 26, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

14. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Open/close the public hearing;
2. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services; and
3. Adopt resolution updating the City's select Development Impact Fees.

Estimated Time: 30 Minutes

15. INTRODUCE ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH APPLETREE INVESTMENT, LLC. FOR A 6-LOT SINGLE-FAMILY RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVE LOCATED AT 18755 OLD MONTEREY ROAD. (APN 764-24-061) (OLD MONTEREY-KELLY VO PROJECT)

Recommendation:

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

Estimated Time: 15 Minutes

16. APPEAL OF THE PLANNING COMMISSION DISTRIBUTION OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21. THE APPLICANT REQUESTED 246 RESIDENTIAL BUILDING ALLOTMENTS AND WAS DENIED RDCS BUILDING ALLOTMENTS BY THE PLANNING COMMISSION. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 728-30-001, IS LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE. (FILE NO. AAE2019-0007 (RDCS2019-0006) HALF-DIVIDEND (FORMERLY BROOKFIELD)

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt resolution denying the appeal and reaffirming the distribution of the Residential Development Control System (RDCS) Building Allotments for Fiscal Year 2020-21.

Estimated Time: 15 Minutes

OTHER BUSINESS

17. ACCEPT PRELIMINARY JUNE 2019 FINANCIAL AND INVESTMENT REPORT, CITY MANAGER SIGNATURE AUTHORITY REPORT, AND DIRECT THE CITY MANAGER TO TRANSFER THE FY2018-19 GENERAL FUND'S SURPLUS TO THE CITY'S PENSION AND OPEB TRUSTS

Recommendation:

1. Accept and file report; and
2. Direct the City Manager to transfer the FY2018-19 General Fund's surplus, pending completion of the year-end audit, to the City's Pension and OPEB Trusts.

Estimated Time: 10 Minutes

18. APPROVE RESPONSE TO GRAND JURY REPORT TITLED "INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY"

Recommendation:

Authorize the City Manager to file the Response to the Civil Grand Jury Report, "Inquiry into Governance of the Valley Transportation Authority", dated June 18, 2019 with the Presiding Judge of the Santa Clara County Superior Court.

Estimated Time: 15 Minutes

19. INTRODUCE ORDINANCE AMENDING CHAPTER 6.36- ANIMAL AND LAND USE, OF TITLE 6 - ANIMALS OF THE CITY OF MORGAN HILL MUNICIPAL CODE TO ALLOW HOBBYIST BEEKEEPING

Recommendation:

1. Waive first and second reading of Ordinance amending Chapter 6.36 "Animals and Land Use" to allow hobbyist beekeeping; and
2. Introduce Ordinance amending Chapter 6.36 "Animals and Land Use" to allow hobbyist beekeeping.

Estimated Time: 10 Minutes

20. PROVIDE DIRECTION REGARDING BUILDING ELECTRIFICATION INCENTIVES AND REQUIREMENTS INCLUDING REACH CODES

Recommendation:

Provide policy direction to staff on electrification initiatives.

Estimated Time: 20 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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



From: [Christina Turner](#)
To: [CityCouncil](#)
Cc: [Donald Larkin](#); [Jeff Bernstein](#); [Leslie Little](#); [Rebecca Garcia](#); ["Julius"](#); [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: RE: BMR Housing Concerns at Madrone Plaza
Date: Wednesday, September 4, 2019 4:27:33 PM

Please see below for response to BMR inquiry:

The Housing team, including Julius Nyanda of Housekeys, have now held multiple meetings/calls with Mr. Bernstein, and accommodated him and the other Madrone Plaza owners once by going to City Council to recommend a minimum return on down payment several months ago. From Mr. Bernstein's perspective, that action to guarantee a minimum 10% annual return on down payment (assuming healthy market conditions) is not adequate.

Mr. Bernstein is requesting that the City allow the Madrone property owners to use a CPI index rather than the AMI (Area Median Income) index contained in their existing restrictions and affordability covenants to calculate the resale value of their homes so that they are afforded access to more equity. He cites the City's current BMR agreement for new properties, which uses CPI as rationale. The owner is trying to find a basis for requesting that the City re-draft a legally recorded document created by an affordable housing non-profit, to modify the purchase agreement.

Jeff Bernstein is one of 33 low-income homebuyers who purchased from South County Housing during 2008-2012. This was not a home delivered through the City's DeFacto inclusionary housing program in the RDCS, where developers create affordable units as a percentage of their larger project. This was a specific development created by South County Housing. Most of the purchasers had first mortgages that were under \$190,000. The mechanism used to create that low first mortgage included large amounts of deferred down payment assistance from multiple sources and state closing cost grants that are no longer available today.

In addition, the Madrone units circumstances were also a bit unique because the market collapsed due to the Recession just as these units were being sold and as a result brought market-rate homes in line with moderate-income priced homes being sold with no assistance. As stated above, this was a project developed by a non-profit housing company. The City provided a tiny layer of down payment assistance but did not design the project and/or its financing structure. The City has inherited the servicing of the units as part of its BMR ownership program because the units are part of the City's affordable housing legacy. There is no way to standardize these units into the City's current housing policy practice. This project bears no resemblance to any other project or group of deed restricted affordable units in the City. However, a modification as being requested for Madrone, if applied to all of our BMR units would decimate the City's housing program. The change would place most resale units out of the reach of new affordable owners.

While some of the Madrone owners want to receive more equity upon sale, the City's BMR program has never been an asset building program (however note that a sale of Bernstein's unit will result in a return of equity of approx. \$49K). It is an affordable living program that allows individuals/families to enjoy home ownership at a much reduced cost with lower mortgages and property tax benefits. The program allows for a low, manageable, and stable mortgage payment, while being insulated from rental market uncertainty and average

rents of \$3000 + in today's market.

In summary, the Housing Team does not recommend any further City Council action.

Begin forwarded message:

From: Jeff Bernstein <jeffbernstein23@gmail.com>
Date: August 20, 2019 at 1:21:03 PM PDT
To: Rich Constantine <rich.constantine@morganhill.ca.gov>, Larry Carr <larry.carr@morganhill.ca.gov>, Rene Spring <rene.spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez-Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rebecca Garcia <rebecca.garcia@morganhill.ca.gov>, Julius Nyanda <julius@nyandaconsulting.com>
Subject: BMR Housing Concerns at Madrone Plaza

Mayor and Council,

Please read the attached letter regarding concerns about BMR housing at Madrone Plaza.

Thank you,
Jeff

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.