



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, December 18, 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

STUDENTS - THE CLOSED SESSION THAT STARTS AT 6:00 PM IS NOT OPEN TO THE PUBLIC. THE REGULAR MEETINGS STARTS AT 7:00 P.M.

SPECIAL MEETING

6:00 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation under Government Code Section 54956.9(b)

Two Cases

REAL PROPERTY NEGOTIATIONS

Pursuant to:	Government Code Section 54956.8
Property:	APN 81713011
Negotiating Parties:	Public Services Director, City Manager
Property Owner:	Sergi, James P Trustee & ET AL
Under Negotiation:	Price and Terms of Payment

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

PRESENTATIONS

YAC PRESENTATION - ASSET #39 SENSE OF PURPOSE

WINERIES OF SANTA CLARA VALLEY PRESENTATION - GEOFF MACE, STACY GIANNINI
& GENA GUGLIELMO

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **APPROVE THIRD AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer the Third Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project for an additional \$99,600, for a total not to exceed amount of \$683,033.

2. **APPROVE SECOND AMENDMENT FOR SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MOTT MACDONALD FOR THE TENNANT AVENUE SEWER PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer a Second Amendment, extending the term, for Services Agreement for Design Professionals with Mott MacDonald, Inc. for the Tennant Avenue Sewer Upgrade Project.

3. **APPROVE THIRD AMENDMENT TO AGREEMENT WITH DAVID J. POWERS & ASSOCIATES TO REVIEW AND PROVIDE COMMENTS ON THE HIGH SPEED RAIL PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer the Third Amendment to Agreement with David J. Powers & Associates for technical support services related to environmental review of the High Speed Rail project, extending the Term of Agreement until December 31, 2020.

4. APPROVE FOURTH AMENDMENT FOR DESIGN SERVICES AGREEMENT WITH SCHAAF & WHEELER FOR THE SEWER LIFT STATION IMPROVEMENTS PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a Fourth Amendment to Service Agreement for Design Professionals with Schaaf & Wheeler Consulting Engineers to provide additional services for the Lift Station Improvements extending the term of the contract for one year.

5. APPROVE SERVICE AGREEMENT FOR DESIGN PROFESSIONALS FOR COMPACTION TESTING AND SPECIAL INSPECTION

Recommendation:

Approve and authorize the City Manager to execute and administer agreements with Engeo, Inc. in the amount of \$350,000 and Construction Testing Services, Inc. in the amount of \$150,000 for compaction testing and special inspection services for various capital improvement projects.

6. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH NELSON\NYGAARD CONSULTING ASSOCIATES, INC. TO ASSIST WITH CITY'S IMPLEMENTATION OF STATE SENATE BILL 743 (TRANSITION FROM LEVEL-OF-SERVICE (LOS) TO VEHICLE-MILES-TRAVELED (VMT) METRIC FOR TRANSPORTATION ANALYSIS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA))

Recommendation:

Approve and authorize the City Manager to execute and administer the professional services agreement with Nelson\Nygaard Consulting Associates, Inc. for assistance with City's implementation of State Senate Bill 743 (SB 743) for a total not-to-exceed amount of \$110,000.

7. APPROVE TWO YEAR PROPERTY LEASE AGREEMENT WITH ADVENT GROUP MINISTRIES AT 535 ALKIRE STREET

Recommendation:

Approve and authorize the City Manager to execute and administer a lease agreement with Advent Group Ministries for the property located at 535 Alkire Street, Suite 150 (also known as The Villas) for the Advent Step Up Program.

8. APPROVE APPLICATION TO BAY AREA METRO FOR A NEW PRIORITY PRODUCTION AREA AND A MODIFIED PRIORITY DEVELOPMENT AREA

Recommendation:

1. Adopt resolution designating two industrial areas as illustrated in Exhibit 1 of the Resolution as a Priority Production Area (PPA) for the City of Morgan Hill;
2. Adopt resolution expanding the City of Morgan Hill's existing Priority Development Area (PDA) beyond Downtown as illustrated in Exhibit 1 of the Resolution; and
3. Authorize the City Manager to take all necessary ministerial actions to complete the PPA and or PDA application process and implement the provisions of the Resolution.

9. APPROVE PLANS EXAMINER AND PLAN CHECK ENGINEER CLASSIFICATIONS, AND REVISED AFSCME AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULES

Recommendation:

1. Approve the Part-Time Temporary and Seasonal Employees Salary Schedule;
2. Approve the Plans Examiner and Plan Check Engineer classifications and updated American Federation of State, County and Municipal Employees (AFSCME) salary schedule; and
3. Adopt resolution amending the adopted Fiscal Year 2019-20 budget to appropriate \$100,139 from the Development Services Fund (206) for the personnel related expenditures.

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

Recommendation:

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

11. AWARD CITY FACILITY FIBER NETWORK INFRASTRUCTURE PROJECT

Recommendation:

1. Approve City Facility Fiber Network Infrastructure Project plans and specifications;
2. Award contract to Elco Electric, Inc. for the City Facility Fiber Network Infrastructure Project in the amount of \$160,589;
3. Authorize expenditure of construction contingency funds not to exceed \$32,118; and
4. Authorize the City Manager to execute and administer the construction contract with Elco Electric, Inc.

12. ADOPT ORDINANCE 2308 NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING MAP AMENDMENT ZA2019-0006 FOR AN RDM-7,000/PLANNED DEVELOPMENT COMBINING DISTRICT AND PLANNED DEVELOPMENT MASTER PLAN FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANA LEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002)

Recommendation:

Waive the reading, adopt Ordinance No. 2308, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

13. ADOPT ORDINANCE 2309 NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT DA2018-0003: DIANA-MANA HANA LEI (MONTECITO ESTATES) FOR A 24-LOT RESIDENTIAL SUBDIVISION ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF DIANA AVENUE AND LOTUS WAY (APN 726-09-001 & 726-09-002)

Recommendation:

Waive the reading, adopt Ordinance No. 2309, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

14. ADOPT ORDINANCE 2310 AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

Recommendation:

Waive the reading, adopt Ordinance No. 2310, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

15. ADOPT ORDINANCE 2311 NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.64 ("TOBACCO RETAILER'S LICENSE") OF TITLE 5 ("BUSINESS LICENSES GENERALLY") OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING TOBACCO RETAILER'S LICENSE

Recommendation:

Waive the reading, adopt Ordinance No. 2311, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

16. ADOPT ORDINANCE 2312, NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE TRANSFER OF 11 ALLOTMENTS FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT AND A DEVELOPMENT AGREEMENT AMENDMENT AAE2019-0010 (DAA2018-0002): E. DUNNE-YOUNG (ANDALUSIA) TO INCORPORATE 26 BUILDING ALLOTMENTS INTO THE APPROVED DEVELOPMENT AGREEMENT FOR THE 46-UNIT ANDALUSIA DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

Recommendation:

Waive the reading, adopt Ordinance No. 2312, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

17. ADOPT ORDINANCE 2313, NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.84 (ACCESSORY DWELLING UNITS) AND SECTION 18.124.020 (RESIDENTIAL LAND USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

Recommendation:

Waive the reading, adopt Ordinance No. 2313, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

PUBLIC HEARING

18. RESCIND ORDINANCE NO. 2131 NEW SERIES IN RESPONSE TO REFERENDUM CHALLENGING ZONING AMENDMENT FOR A PARCEL LOCATED ON THE NORTHEAST CORNER OF MADRONE PARKWAY AND LIGHTPOST WAY (APN 726-33-026)

Recommendation:

Rescind Ordinance No. 2131 in response to the referendum petition submitted by the Morgan Hill Hotel Coalition.

Estimated Time: 5 Minutes

19. ADOPT RESOLUTION AMENDING THE GENERAL PLAN LAND-USE DESIGNATION ON THE PARCEL LOCATED AT THE SOUTH-EAST CORNER OF LIGHTPOST WAY AND MADRONE PARKWAY. (APN 726-33-026) FROM COMMERCIAL TO COMMERCIAL/INDUSTRIAL

Recommendation:

1. Open/close public hearing; and
2. Adopt Resolution approving an amendment to the General Plan land-use designation.

Estimated Time: 5 Minutes

20. ADOPT RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS (MISC2019-0009) THAT RESPOND TO THE REQUIREMENT OF SB330-GOVERNMENT CODE SECTION 65589.5

Recommendation:

1. Open/close public hearing; and
2. Adopt Resolution approving the Residential Development Design and Development Standards.

Estimated Time: 30 Minutes

OTHER BUSINESS

21. ACCEPT SEPTEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

22. INTRODUCE ORDINANCE AMENDING CHAPTER 17.28 OF THE MORGAN HILL MUNICIPAL CODE REGARDING PARKLAND DEDICATION AND/OR IN LIEU FEES FOR NEW SUBDIVISIONS

Recommendation:

1. Waive the first and second reading of the Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update the City's Park Dedication Ordinance; and
2. Introduce Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update park dedication requirements.

Estimated Time: 15 Minutes

23. SPORTS FACILITY LAND ACQUISITION

Recommendation:

1. Adopt resolution amending the adopted Fiscal Year (FY) 2019-20 budget to appropriate \$1,250,000 from the Park Impact Fund (301) for the purchase of property and associated costs;
2. Authorize the City Manager to execute a purchase agreement with Angelo Grestoni for the purchase of 3.85 acres of property (APN 817-13-008) for \$1,199,000;
3. Authorize the City Manager to execute a certificate of acceptance for the property; and
4. Authorize the City Manager to execute all documents, agreements, and payments necessary to complete the purchase of the property.

Estimated Time: 30 Minutes

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

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01;
3. Review and approve the City Council Appointments to Outside Agencies; and
4. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

Estimated Time: 10 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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



December 18, 2019



Monthly Developmental Asset #39 Sense of Purpose

Young person reports having a high self-esteem.

The purpose of human life is to
serve, and to show compassion
and the will to help others.

Albert Schweitzer

How sense of purpose affects youth?

- o Motivates youth to succeed
- o Encourages youth to try new things
- o Youth feels happier
- o Improves their state of mind



How youth can feel important?

- o Support their ideas
- o Consider their personal opinions
- o Allow them to share their thoughts
- o Tell them they matter





December Complimentary Asset #37 Personal Power

Young person feels he or she has control over “things that happen to me.”



How this relates to sense of purpose?

- o Involves having good mental health – be positive, sleeping & eating well...

When you focus on what you want,
everything else falls away meaning.

- o Helps recognize self worth – self esteem

You are not your mistakes;
They are what you did,
Not who you are.

(Lisa Lieberman – Wang)

- o Ability to influence others – serve your community

The effect you have on other is the most valuable currency there is.
When you work towards something greater than yourself
you find meaning, you find purpose.

How have you helped the youth in our community feel important?





CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

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

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the Third Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project for an additional \$99,600, for a total not to exceed amount of \$683,033.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:

Upon the passage of the County's Measure B sales tax initiative in November 2016, the Morgan Hill City Council moved to approve a Service Agreement for Design Professionals with Mark Thomas & Company for \$401,873 to prepare design plans for the Hale Avenue Extension Project (Attachment 1) which involves the construction of a new two-lane multi-modal roadway from the Main Avenue and Hale Avenue intersection to the Spring Avenue and Dewitt Avenue intersection.

A First Amendment in the amount of \$92,860 was approved by City Council on April 18, 2018 to include additional design elements, such as: end treatments for Warren Avenue and Nob Hill Terrace, sound wall architectural support, utility undergrounding, and design coordination with the Santa Clara Valley Water District's Upper Llagas Creek Flood Control Phase II Project. This first amendment increased the total not to exceed contract amount to \$494,733 (\$401,873+\$92,860).

A Second Amendment in the amount of \$88,700 was approved on April 17, 2019 to increase the scope of services to include: intersection design modifications, lighting modifications and pavement section redesign as cost saving measures. This second

amendment increased the total not to exceed amount to \$583,433 (\$494,733 plus \$88,700).

Due to the timing of the Hale Avenue Extension Project and the Valley Water's Phase II Upper Llagas Creek Flood Control Project, it will be necessary to coordinate the final Main/Hale connection improvements with the District's work in the area. The Hale Avenue Extension Project work that will be coordinated includes; traffic signal and final curb/gutter/sidewalk placement at and just south of Main Avenue. Staff plans to bid the project with flexibility and alternatives in this area to appropriately manage the project with the least amount of impact to the public as possible. This will require alternatives for the timing and components included in this section of the project.

It is estimated that the project will be ready to bid in February/March 2020 with construction commencing in summer 2020. Staff is confident that Measure B funds will be secured prior to bidding the project.

The original contract and subsequent amendments did not include bidding or design support services during construction. This was intentional due to not knowing when the project would be constructed. Thus, the proposed Third Amendment would include additional services as; interim design for Hale/Main intersection, demolition of PG&E building, bid support, construction support, and preparation of record drawings. Therefore, staff recommends that Mark Thomas & Company's scope of work be amended to include these elements at a cost not to exceed \$99,600, as reflected in the Third Amendment (Attachment 2). Thus, the total not to exceed contract amount would become \$683,033 (\$401,873 original + \$92,860 first + \$88,700 second + \$99,600 third amendment).

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. In addition, the environmental studies process also solicited input from the community regarding environmental impacts from the project. Staff has been providing project updates on the City's website and will continue posting updates throughout construction. A full communications plan is in development for the construction phase of this project.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with the third amendment at this time. This is not recommended as it would delay or stop work on the Hale Avenue Extension Project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

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

On April 18, 2018, City Council approved a First Amendment with Mark Thomas & Company for additional scope of work for \$92,860.

On April 17, 2019, City Council approved a second amendment with Mark Thomas & Company for increased services for \$88,700.

FISCAL AND RESOURCE IMPACT:

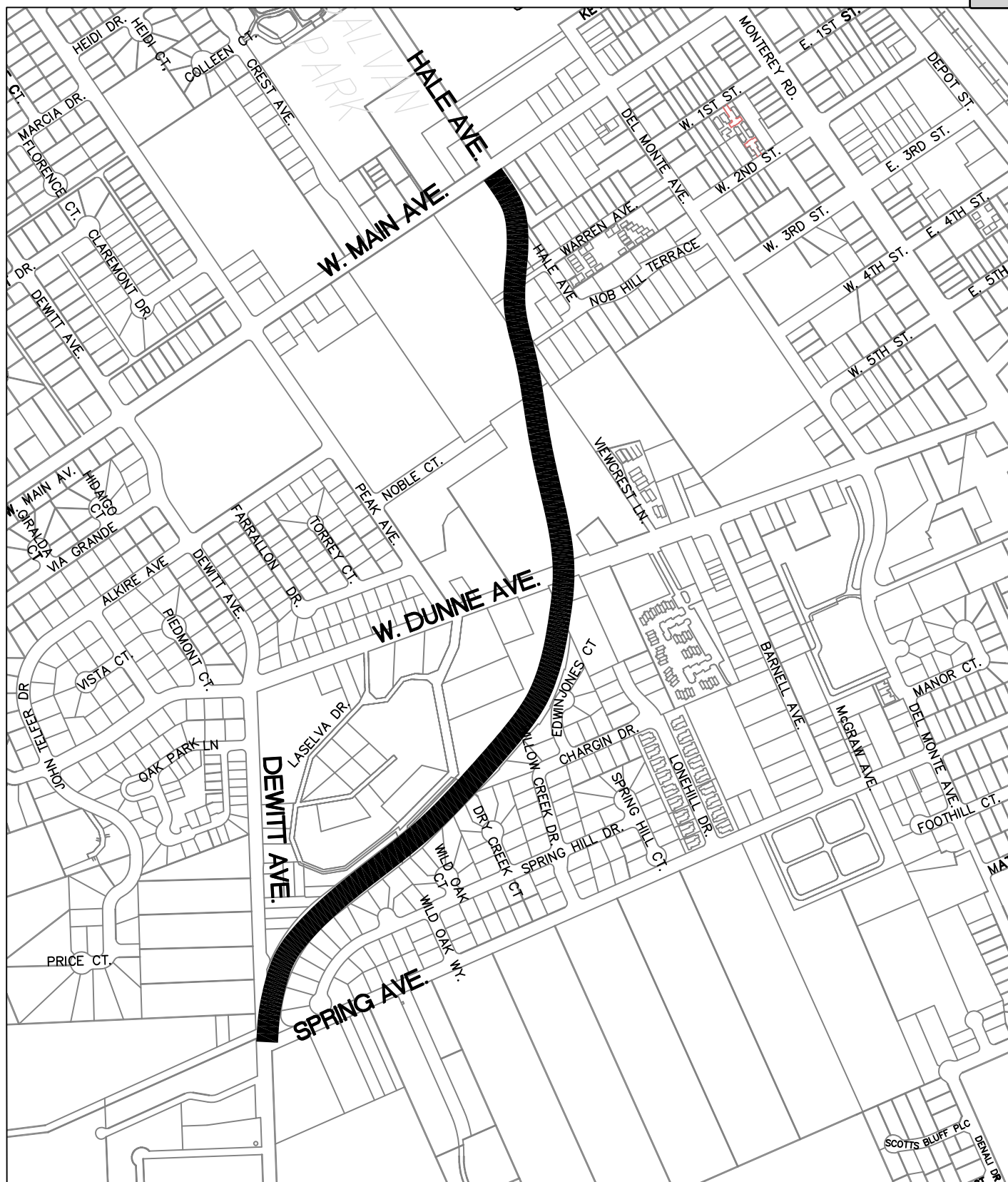
The Third Amendment with Mark Thomas & Company increases the contract amount by \$99,600 to a total not to exceed amount of \$683,033. Sufficient funds and budgetary appropriations are available in the adopted FY 2018-19 through 2023-24 Capital Improvement Program, under the Hale Avenue Extension project. The total amount budgeted for this project in the current biennial budget is \$19,960,000, from Traffic Impact Fund (309), project #546007.

CEQA (California Environmental Quality Act):
Project.

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

LINKS/ATTACHMENTS:

1. Project Location Map
2. Third Amendment-Mark Thomas & Company



Attachment: Project Location Map (2491 : Third Amendment with Mark Thomas & Company)

SCALE: NTS



CITY OF MORGAN HILL

Engineering & Utilities Department
CIP Engineering Division

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

LOCATION PLAN

Hale Avenue Extension

Date: 12/18/19

Drwn by: DIG

PAGE 1 OF 1

Packet Pg. 20

THIRD AMENDMENT TO AGREEMENT MARK THOMAS & COMPANY

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

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017, for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 24, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND NO/100 (\$494,733.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of May 17, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to FIVE HUNDRED EIGHTY-THREE THOUSAND FOUR HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$583,433.00). The CONSULTANT AGREEMENT, and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"The services to be performed by CONSULTANT shall consist of the following additional services as set forth in Exhibit "2" dated October 1, 2019 and incorporated herein by reference."

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

"4.1 **Amount.** Compensation under this Agreement shall not exceed SIX HUNDRED EIGHTY-THREE THOUSAND THIRTY-THREE AND/100DOLLARS (\$683,033.00) and shall be billed based on the rate and basis set forth in **Exhibit A under Exhibit "2" dated October 1, 2019.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the

maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council."

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

"7.2.2. Workers Compensation

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

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Please see attached signature page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

MARK THOMAS & COMPANY

City Attorney

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

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

Date: _____

126-04-17-008

EXHIBIT "1"

SECOND AMENDMENT TO AGREEMENT
MARK THOMAS & COMPANY

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 5/17/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MARK THOMAS & COMPANY, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on April 17, 2019
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of February 6, 2017 for consultant services for a maximum compensation of FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-THREE AND NO 00/DOLLARS (\$401,873.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 24, 2018, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to FOUR HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED THIRTY-THREE AND 00/DOLLARS (\$494,733.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

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

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

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

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

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

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

"9. Compliance with Law.

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

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

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

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

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."

[illegible]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

City Clerk

Date:

5/24/19

APPROVED AS TO FORM:

Donald A. Larkin, City Attorney

Date:

5-1-19

CITY OF MORGAN HILL

Christina J. Turner, City Manager

Date:

5-11-19

MARK THOMAS & COMPANY

By:

Title:

Sasha Densky, Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

3/25/19

By:

Title:

Print Name and Title of Signer.

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

Date:

3/25/2019

JAMES D. HOWELL

EXHIBIT "B"**MARK THOMAS**

March 21, 2019

Project No.: SJ-17101

Mr. David Gittleson
 City of Morgan Hill
 Peak Avenue
 Morgan Hill, CA 95037

RE: Hale Avenue Extension- Additional Services.

Dear David:

As previously discussed, Mark Thomas kindly requests a budget increase for the Hale Avenue Extension (Project) Plans, Specifications, and Estimate (PS&E) and Environmental Permitting as additional scope of work is necessary in order to complete the project.

SCOPE OF SERVICES**INTERSECTION IMPROVEMENTS:****REVISIONS TO SPRING-HALE INTERSECTION**

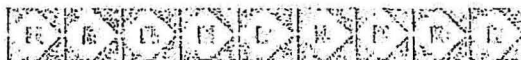
The Spring/Hale intersection must be revised to widen northbound DeWitt Avenue at the approach to Spring Avenue, and to extend the median island to prohibit left turns from Buck Hill to northbound Dewitt. This will eliminate the three way stop and reduce congestion.

REVISIONS TO HALE/MAIN INTERSECTION

Due to the PL-566 project, Hale Avenue will require complete reconstruction and widening between Main Avenue and Hillwood Lane. This will affect the intersection of Hale and Main. Thus, the Hale Extension project must be revised at Hale/Main to align with the future widening of Hale Avenue.

STREET LIGHT AND PEDESTRIAN IMPROVEMENTS

Reposition street lights to be consistent with the other segments of Hale Avenue. The pedestrian path shall be aligned to follow the curvature of the roadway thus eliminating pedestrian lighting, and add curbs/gutters to secure the roadway in place.



(408) 452-5873
 2290 NORTH FIRST STREET, SUITE 204
 SAN JOSE, CA 95131

MARKTHOMAS.COM

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

March 21, 2019

ENVIRONMENTAL PERMITTING

The permits also need to be revised to include the SCVWD PL-566 project improvements. Additional revisions have been required from the environmental agencies that were unforeseen. See attached Scope and Fee from WRA.

Basin Research Associates will prepare a Historic Properties Survey and Report, as required by the Corps. BASIN proposes to develop a Historic Properties Survey Report/Finding of Effect (HPSR) document to meet the requirements of the Corps. BASIN's primary tasks will focus on: (1) reviewing previous archaeological surveys and completing an archaeological assessment that identifies cultural resources within 500 feet of the proposed project location; and, (2) utilize the information obtained on the location, type and distribution of any resources to review potential project impacts and develop appropriate mitigation actions.

The identification effort will include: (1) development of an Archaeological Area of Potential Effects (APE); (2) completion of an archival and literature search within 0.25 miles by the California Historic Resources Information System, Northwest Information Center (CHRIS/NWIC); (3) an archaeological field review of project areas; (4) a request to the Native American Heritage Commission (NAHC) for a review of the Sacred Lands File; and, (5) contact with locally knowledgeable Native Americans identified by the NAHC. The field review will be completed by an Archaeologist who meets the Standards of the Secretary of the Interior for archaeology.

The results will be prepared in a *Historic Properties Survey Report* (HPSR) format and provide a description of the project, present minimal background context and regulatory information, provide the results of the archival and field research, a discussion of the archaeological sensitivity of the proposed projects, and, the results of Native American consultation and other interested party consultation. The *Finding of Effect* (FOE) component of the document will discuss if any significant historic properties will be affected by the project with mitigation or protection measures recommended as appropriate.

Appendices will include, as appropriate, graphics and photographs; the results of the records search; and, Native American consultation. BASIN anticipates one comment round.



(408) 455-6373
2290 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

MARKTHOMAS.COM

March 21, 2019

OPTIONAL SERVICES

Optional services on an "as needed basis" as directed by the City.

TOTAL ESTIMATED FEE: \$88,700

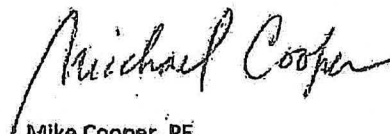
Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

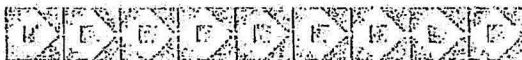
MARK THOMAS



Sasha Dansky, PE
Principal/Vice President



Mike Cooper, PE
Project Manager



(408) 452-5373
2200 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

MARKTHOMAS.COM

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

COST PROPOSAL FOR PROJECT SCOPE - Morgan Hill: Hale Avenue Extension Project

MARK THOMAS	Mark Thomas																		Subcontractors						TOTAL COST
	Principal	1st Project Manager	2nd Project Manager	Design Engineer	Design Engineer	Survey Manager	Project Surveyor	Survey Technician	Apprentice	2 Person Field Crew	1st Person Field Crew	Landscape Designer	1st Person Accountant	Project Accountant	2nd Person Accountant	1st Project Assistant	Project Assistant	Total Hours	Total NM Cost	DBE TRANSPORTATION	DBE MISC	Non-DBE	DBE BASIC RESEARCH ASSOCIATE	Sub Mark Up 10%	
1.0 REVISIONS TO SPRING/HALE INTERSECTION	5357	5225	5158	5117	537	5100	5158	587	576	5297	5158	581	5121	598	5116	587	562								
1.1 Revisions to Spring/Hale Intersection and Medians	2	8		40	40													90	\$13,074	5,000	2,500			\$750	
Subtotal Phase 1	2	8		40	40													90	\$13,074	\$5,000	\$2,500			\$750	
2.0 REVISIONS TO HALE/MAIN INTERSECTION																									
2.1 Revisions to Hale/Main Intersection	2	8		10	20													40	\$5,524					\$50	
Subtotal Phase 2	2	8		10	20													40	\$5,524					\$50	
3.0 STREET LIGHTS																									
3.1 Street Lights	2			4														8	\$5,838	3,000				\$500	
Subtotal Phase 3	2			4														8	\$5,838	\$3,000				\$500	
4.0 PEDESTRIAN PATH, FLUSH CURBS AND MAINTENANCE BANDS																									
4.1 Pedestrian path, flush curbs and maintenance bands	2			4	40													48	\$4,738					\$50	
Subtotal Phase 4	2			4	40													48	\$4,738					\$50	
5.0 PEDESTRIAN PATH LIGHTS																									
5.1 Pedestrian path lights	2			4	16													22	\$2,470					\$50	
Subtotal Phase 5	2			4	16													22	\$2,470					\$50	
6.0 ENVIRONMENTAL PERMITTING																									
6.1 Environmental Permitting																		0	\$50		21,500			\$2,150	
6.2 Historic Properties Survey Report																		0	\$50				10,000	\$1,000	
Subtotal Phase 6																		0	\$50		\$21,500		\$10,000	\$3,150	
TOTAL HOURS	14	22		120	120													204							
Anticipated Salary Increases																									
OTHER DIRECT COSTS																									
TOTAL COST	\$13,420	\$4,950		\$6,786	\$11,440		\$500	\$3,580	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$24,304	\$10,000	\$21,500		\$11,000	\$2,150	\$73,204	
OPTIONAL TASKS																									
1.1 Optional services requested by the city																		0	\$15,000					\$50	
Subtotal Optional Tasks																		0	\$15,000					\$50	
TOTAL HOURS - OPTIONAL																									
Anticipated Salary Increases																									
OTHER DIRECT COSTS - OPTIONAL																									
TOTAL COST - OPTIONAL	\$50	\$50		\$50	\$50		\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$50	\$15,000					\$50	\$15,050	

3/27/2013



RATE SCHEDULE (M-1)

EXHIBIT 2 March 21, 2019

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2019*

HOURLY CHARGE RATES**Engineering Services**

Sr. Principal	\$425
Principal	\$394
Sr. Engineering Manager	\$332
Engineering Manager	\$284
Practice Area Leader	\$284
Sr. Project Manager	\$238
Sr. Technical Lead	\$238
Project Manager	\$195
Technical Lead	\$195
Sr. Project Engineer	\$167
Sr. Technical Engineer	\$167
Project Engineer	\$146
Design Engineer II	\$128
Design Engineer I	\$103
Sr. Technician	\$123
Technician	\$91
Intern	\$60

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$252
LAUD Division Manager	\$230
Sr. LAUD Project Manager	\$200
LAUD Project Manager	\$178
Landscape Architect II	\$145
Landscape Architect I	\$107
Landscape Designer II	\$98
Landscape Designer I	\$72
Intern	\$60

District Management Services

Deputy District Manager	\$247
Sr. Inspector	\$124
Inspector	\$90

Construction Management Services

Resident Engineer	\$236
Construction Inspector	\$159

Survey Services

Sr. Survey Manager	\$225
Survey Manager	\$210
Sr. Project Surveyor	\$190
Project Surveyor	\$160
Sr. Surveyor	\$145
Surveyor	\$125
Lead Survey Technician	\$150
Sr. Survey Technician	\$125
Survey Technician	\$110
Survey Intern	\$75
Single Chief	\$150
Single Chainman	\$125
Apprentice	\$80
1 Person Field Crew	\$175
2 Person Field Crew	\$275
3 Person Field Crew	\$375

Project Support/Coordination Services

Sr. Project Accountant	\$130
Project Accountant	\$103
Sr. Project Coordinator	\$124
Project Coordinator	\$98
Sr. Project Assistant	\$94
Project Assistant	\$66
Sr. Technical Writer	\$107
Technical Writer	\$68
Sr. Graphic Designer	\$117
Graphic Designer	\$83

Grant Writing Services

Sr. Funding Specialist	\$155
Funding Specialist	\$125

Special Services

Expert Witness	\$405
Strategic Consulting	\$405

OTHER DIRECT COSTS**Reimbursables including, but not limited to:**

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

*Rates subject to escalation with new hourly rate schedule as of July 1, 2019

PAGE 1 OF 1

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

EXHIBIT 1

FIRST AMENDMENT TO AGREEMENT
MARK THOMAS & COMPANY

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

RECITALS

The following recitals are a substantive part of this Agreement:

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

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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[Signatures on Next Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

[Signature]
 Deputy City Clerk
 Date: 4/25/18

APPROVED AS TO FORM:

[Signature]
 City Attorney
 Date: 4-23-18

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 4/24/18

MARK THOMAS & COMPANY

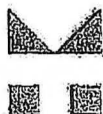
[Signature]
 By: *Sasha Dvorsky*
 Title: *Sasha Dvorsky, Vice President*
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 3/7/18

[Signature]
 By: *R. Matt Brogan*
 Title: R. Matt Brogan, Secretary

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

Date: 3/6/18



MARK THOMAS

EXHIBIT "B" DATED FEBRUARY 15, 2018

February 15, 2018

Project No.: SJ-47101

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

RE: Hale Avenue Extension- Additional Services

Dear David:

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

SCOPE OF SERVICES

IMPROVEMENTS TO WESTERN TERMINUS OF WARREN AVENUE AND NOB HILL TERRACE

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

FEE: \$19,950

SOUNDWALL AND RETAINING WALL ALTERNATIVES

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

MARKTHOMAS.COM

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

February 15, 2018

FEE: \$9,500

UTILITY UNDERGROUNDING- FEASIBILITY STUDY

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

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

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

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

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

SCVHA COORDINATION AND SCVHP COMPLIANCE

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

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

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

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

markthomas.com

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

February 15, 2018

FEE: \$25,000

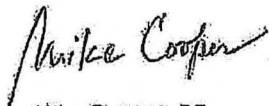
TOTAL ESTIMATED FEE: \$92,860.

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

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

Sincerely,

MARK THOMAS



Mike Cooper, PE
Senior Project Manager

Accepted:

Signature

Name/Title

MARKTHOMAS.COM

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)



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

**CHANGE ORDER 1
ADDITIONAL BIOLOGICAL SUPPORT SERVICES**

Prepared for:

Admas Zewdie
1980 Zanker Road
San Jose, California, 95112

July 21, 2017

WRA Project No. 21059-1

PURPOSE

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

ADDITIONAL SERVICES

- a. SCVHA coordination
- c. SCVHP compliance

CHANGE ORDER

Task 1: Santa Clara Valley Habitat Plan Coordination

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

2169-S East Francisco Blvd., San Rafael, CA 94901 (415) 454-0365 tel (415) 454-0128 fax info@wto-ca.com www.wto-ca.com

SCHEDULE

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

STAFFING

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

ASSUMPTIONS

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

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

ESTIMATED COST

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

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

TERMS AND CONDITIONS

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

APPROVAL TO PROCEED

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

Scope of Work and Estimated Budget accepted by:

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

PENNINO

MANAGEMENT GROUP

Bryan Pennino
President

Michael Locke
Vice President

Phillip Pennino
Secretary/Treasurer

February 7, 2016

Mr. Mike Cooper
Mark Thomas & Company
2290 North First Street, Suite 204
San Jose, CA 95131

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

Dear Mr. Cooper:

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

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

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

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

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

Sincerely,
Pennino Management Group



Phillip Pennino
Secretary/Treasurer

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

Signature: _____

Title: _____
Mark Thomas & Company

Phone: (205) 370-8608 | Fax: (205) 370-1608 | www.pennino-management.com
4203 Radio Street, Ste. 1 | North LA 94042 | PO Box 1566 | Los CA 95241

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

Mr. Mike Cooper
February 6, 2018
Page 2

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

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

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

Task 2 PG&E Submittal

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

Task 3 Design Coordination

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

Task 3.5 Contracts & Payment

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

Task 4 Temporary Power for Construction (Not Included)

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

Task 5 Construction

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

Task 6 Fiber Coordination

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

Task 7 Close Out

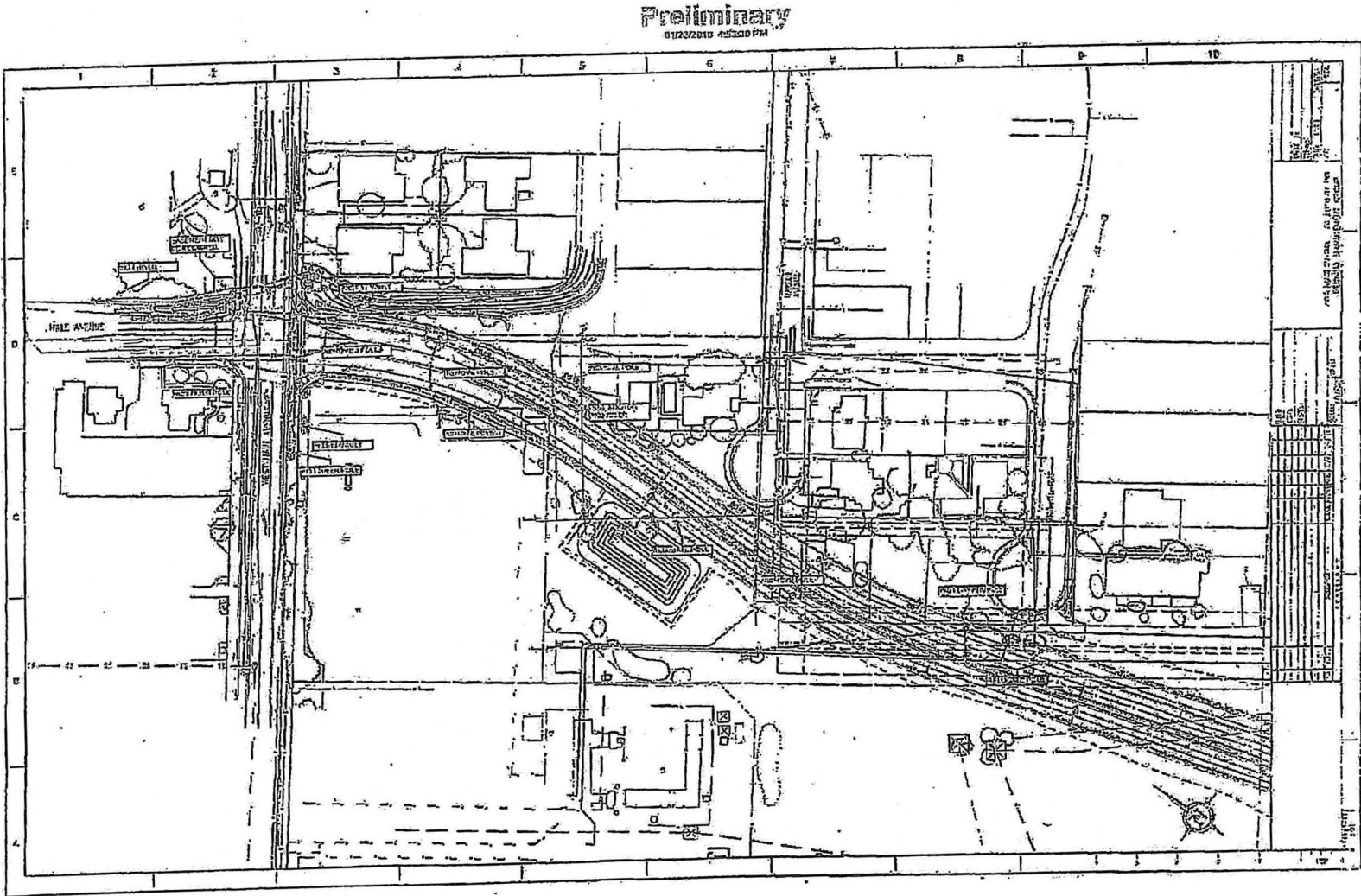
- Prepare Closeout Documents.
- Complete Project Binder.

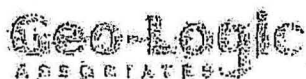
Scope of Work

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

February 5, 2018

Packet Pg. 44





February 8, 2018
 Proposal PA18-1007-PR

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

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

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

PURPOSE AND SCOPE OF SERVICES

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

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

26055 Caputo Drive, Suite D, Morgan Hill, CA 95037 • T 408-778-2818 • F 408-779-6879 • www.geo-logic.com

UNDERSTANDING AND ASSUMPTIONS

This proposal is based on the following assumptions:

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

SCHEDULE

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

FEE

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

AUTHORIZATION

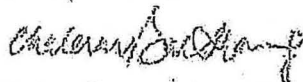
Please provide a change order to our current contract with your firm on the Hale Avenue Extension project.

CLOSURE

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

Sincerely,

Geo-Logic Associates



Chalerm (Beeson) Liang, GE
Supervising Geotechnical Engineer

MARK
THOMAS

RATE SCHEDULE (1-1)

EXHIBIT A

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2018*

HOURLY RATES

Engineering Services

Sr. Principal	\$412
Principal	\$381
Sr. Engineering Manager	\$322
Engineering Manager	\$276
Practice Area Leader	\$275
Sr. Project Manager	\$238
Sr. Technical Lead	\$233
Project Manager	\$192
Technical Lead	\$192
Sr. Project Engineer	\$162
Sr. Technical Engineer	\$162
Project Engineer	\$140
Design Engineer II	\$124
Design Engineer I	\$101
Sr. Technician	\$119
Technician	\$86
Intern	\$59

Urban Planning/Landscape Architecture Services

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

Special Services

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

Survey Services

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

Project Support/Coordination Services

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

OTHER CHARGES

Reproducible including, but not limited to:

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

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

PAGE 1 OF 1

126-04-17-008

EXHIBIT "1"

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS

Mark Thomas & Company

THIS AGREEMENT is entered into and becomes effective on 2/6/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Mark Thomas & Company a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

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

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

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

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

7.1. Insurance Types and Amounts:

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

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

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

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. General Liability.

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

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

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

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

Certificate Holder address:

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Mark Thomas & Company
attn: Mike Cooper, Senior Project Manager
2290 North First Street, Suite 304
San Jose, CA 95131

Address of CITY is as follows:

Development Services Center	with a copy to:
attn: David Gittleson	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. Maintenance of Records.

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

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

5

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors, in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

- 20.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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

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

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

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

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

ATTEST:

Michelle Wilson
City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date: 2/7/17

APPROVED AS TO FORM:

Donald A. Larkin
City Attorney

Donald A. Larkin
Print Name

Date: 2/2/2017

CITY OF MORGAN HILL

Steve Rymer
City Manager

Steve Rymer
Print Name

Date: 2/6/17

Mark Thomas & Company

By: Sasha Dansky

Title: Sasha Dansky, Principal/Vice President

Print Name and Title of Signer:

If Corporate: Chairman, President or

Vice President

Date: January 5, 2017

Mark Brown

By:

Title: Mark Brown, Secretary

Print Name and Title of Signer:

If Corporate: Secretary, Assistant

Secretary, Chief Financial Officer or

Assistant Treasurer

Date: January 5, 2017

EXHIBIT A
SCOPE OF SERVICES

Exhibit A

HALE AVENUE EXTENSION PROJECT

SCOPE OF WORK

January 5, 2017

City of Morgan Hill (City) and Mark Thomas & Company, Inc. (MTCO) entered into an agreement for the preparation of contract documents for the Hale Avenue Extension project in April 2011. The project is to extend Hale Avenue from its present terminus at West Main Avenue in the north to the junction of Spring Avenue and DeWitt Avenue in the south, a distance of approximately 4,700 feet. The new road will have one traffic lane in each direction and a median. Bicycle/pedestrian paths, sidewalks, shoulder areas, landscape areas, bio swales, retaining walls and sound walls are proposed along sections of the roadways. Other proposed improvements include new storm drainage facilities, two stormwater detention ponds, water mains, and light standards. The project was developed to the 90% completion level before it was suspended in 2013. The contract for the project has subsequently expired. City would like to complete the contract documents to prepare the project for construction in 2018. The scope of work presented below has been developed based on a meeting held between City and MTCO on December 17, 2015, and subsequent communications with the City. MTCO will perform the work described herein, and will diligently perform this scope of work and will be responsible for items of work under this agreement to the extent that issues arising from the performance of these services are within our reasonable control and that MTCO's obligation to indemnify and defend are limited to the extent actually caused by MTCO in the performance of this scope of work.

The scope of work assumes that the project features remain unchanged from the previous contract with the following exceptions:

- In conformance with current C.3 requirements, add Biotreatment facilities to treat stormwater runoff from the portions of the new roadway that will not be draining to the detention ponds.
- Add soundwall per EIR
- Convert plans to Civil 3D- Optional
- Convert specifications to Caltrans 2015-Optional

1. Project Management

- Supervise, coordinate, and monitor project development.
- Maintain and coordinate project files throughout the contract period.
- Prepare and regularly update a detailed Critical Path Method (CPM) schedule.
- Prepare and submit monthly progress reports.
- Provide a monthly invoice, by task, that will present charges at agreed to hourly rates.
- Perform Quality Assurance/Quality Control review at milestone submittals.

Deliverables:

- *CPM Schedule and Monthly Updates*
- *Monthly Invoices and Progress Reports*
- *Quality Process Documentation*

2. Surveying

2.1. Plats and Legal Descriptions

- Prepare plat exhibits and legal descriptions for easement and right-of-way acquisitions. One plat exhibit and legal description per parcel will be prepared showing Public Street Easements, Slope Easements and Temporary Construction Easements. Separate plats and legal descriptions will be prepared for public utility easements and utility vacations. One round of review comments will be incorporated. The anticipated number of plat exhibits and legal descriptions is as follows:

Acquisition Type	Number of Plats & Legals
Public Street Easements, Slope Easements and Temporary Construction Easements	15
Public Utility Easements	5
Utility Vacations	5

2.2. Supplemental Field Surveys

- Conform Topographic Survey - Topographic surveys will be conducted at up to four (4) locations to assist in the determination of conform elevations.
- Positive Utility Pothole Survey - The locations and elevations of positive utility potholes will be surveyed using Real Time Kinematic (RTK) GPS or conventional survey methods.

Deliverables:

- Plats and Legal Descriptions (25 total)
- AutoCAD file with topographic survey information

3. Geotechnical Report

- Review the Draft Geotechnical Report that has been prepared for the project in 2012.
- Incorporate comments from City.
- Perform a site reconnaissance to observe existing surface conditions, focusing on changes since the draft report was prepared.
- Prepare a 100% final geotechnical investigation report presenting findings, conclusions and recommendations for the project.

Deliverables:

- Final Geotechnical Report (10 copies)

4. Potholing

- Contract with a potholing firm to perform up to ten (10) potholes of existing utilities at locations where proposed improvements may conflict with existing utilities. Pothole locations will be determined based on utility mapping obtained from utility companies.
- Locations and elevations of the potholes will be surveyed under Task 2.2.

Deliverables:

- Layout location and depth of pothole results

5. Utility Company Coordination

- **Utility Identification and Verification** – Collect updated as-built information of existing utilities from utility companies and City. Verify that existing utilities have been shown in the project plans.
- **Utility Relocation Exhibits** – Identify utility conflicts and prepare relocation exhibits to be used in coordinating with utility companies as they design the relocations of their utilities for up to three (3) utility companies.
- **Utility Relocation Coordination** – Coordinate with up to three (3) utility companies for relocations. MTCO will review relocation plans to be prepared by the utility companies. MTCO will review liability letters submitted by utility companies, and if necessary, prepare a draft utility agreement for City's signature. MTCO will also prepare utility relocation notices.

Deliverables:

- *Copies of correspondence with utility companies*
- *Utility relocation exhibits*

6. Meetings

6.1. Project Coordination Meetings

- Hold a kick-off meeting with City staff.
- Hold up to six (5) coordination meetings with stakeholders and City staff to coordinate project progress.
- Prepare meeting agenda and minutes for the above meetings.

6.2. Commission and Council Meetings

- Assist City in making up to two (2) presentation to City commissions and Council.
- Prepare draft presentation material (PowerPoint) for City's use in these presentation.
- Attend meetings to assist City staff in responding to questions from commissioners and council members. This will be considered extra work, and will be performed when requested by the City, on a time and material basis.

Deliverables:

- *Meeting agenda (6 meetings)*
- *Meeting minutes (6 meetings)*
- *Draft PowerPoint presentations (2 meetings) – This will be considered extra work, and will be performed when requested by the City, on a time and material basis.*

7. Contract Documents

7.1. 95% PS&E Submittal

- Review previously submitted 90% Plans, Specifications and Estimate (PS&E) package for conformance with current design standards and guidelines.
- Update PS&E package to conform to current design standards and guidelines. The basis of the technical specifications shall be the Caltrans Standard Special Provisions for the 2015 Standard Specifications.

- o Update project plans to comply with current C3 requirements including Bioretention basins.
 - o Revised Civil plans to be in Civil 3D format.
 - o Review quantity estimates, update unit prices, and prepare an updated cost estimate.
- 7.2. 100% Submittal**
- o Prepare the 100% level of PS&E documents for the project that will be considered ready for bid advertisement.
 - o Update and incorporate comments received on the 90% submittal into the 100% PS&E documents.
 - o Revise cross sections of the improvements at 50-foot intervals on tangents, at 25-foot interval for curves and at locations of vertical and horizontal alignment changes, in Civil 3D format. The cross sections shall be to scale and presented on grid sheets to match bid plans. The cross sections will not be part of the contract documents, but are rather intended to be provided to the contractor as supplemental information.
 - o Contract Bid Documents - Prepare and submit Contract Bid Documents to the City for final review and comment.
 - o Incorporate one (1) round of reviews and prepare a bid package. Comments are anticipated to be minor. City will be responsible for reproduction of the bid documents.
 - o Combine technical specifications with City-provided boiler plate specifications for final production.

Deliverables:

- o 95% Plans, Specifications, Estimate - 6 hard copies (11"x17")
- o 100% Plans, Specifications, Estimate - 6 hard copies (11"x17")
- o Design Cross Sections - 1 copy (11"x17")
- o Bid Set - PDF copy

8. Permitting Support

- o Tree Inventory and Report - conduct an inventory and assessment of all Significant Trees pursuant to the City of Morgan Hill Tree Ordinance (Chapter 12.32 of the Municipal Code - Restrictions on Removal of Significant Trees) within and adjacent to the Project Area.
- o Wetland Delineation - conduct protocol level jurisdictional wetlands delineation. Prepare a Section 404 jurisdictional wetlands delineation report in the format required by the local District of the Corps of Engineers along with a report and map of potential jurisdictional areas.
- o Rare Plant Surveys and Report - conduct a protocol-level rare plant survey. This survey would be timed to coincide with the peak-blooming period of rare plant species known from the project vicinity.
- o Section 404 Nationwide Permit Application - Prepare and submit a pre-construction notification (PCN) to the Corps for consideration under the Nationwide Permit program. Attend site visits with the Corps and respond to questions from the Corps about the PCN and the project.
- o Section 401 Water Quality Certification - Prepare and submit a Section 401 Water Quality Certification to the Regional Water Quality Control Board (RWQCB).

- Section 1602 Streambed Alteration Agreement - prepare and submit a Section 1602 Lake and Streambed Alteration Agreement (LSAA) for the project. The LSAA covers maintenance activities with the potential to alter a stream- or lake-bed or -bank, in addition to potential wildlife habitat on their margins.
- Section 7 Biological Assessment and Coordination - prepare the Section 7 Biological Assessment report and coordinate with USFWS upon consultation initiation by the Corps.
- Provide consultation services in verifying that the mitigation measures identified in the environmental documents (to be provided by the City) are properly incorporated in the design document.
- NOTE: Portions of the work detailed above may be able to be eliminated if covered in the Project EIR currently being prepared for the City.

Deliverables:

- *Significant Tree Assessment Report*
- *Wetland Delineation Report*
- *Rare Plant Survey Report*
- *Section 404 Permit Package*
- *Section 401 form*
- *Section 1602 Permit Package*
- *Section 7 Biological Assessment*

9. Bidding Support- OPTIONAL- May be included in subsequent contract amendment at time of construction.

- Provide minor clarification of PS&E documents
- Provide information in response to bidders' questions regarding the bid documents
- Attend Pre-Bid Meeting
- Prepare addenda to the bid documents
- Attend Bid Opening and assist in preparation of a bid summary

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

Deliverables:

- *Responses to bidders' questions*
- *Addenda to contract documents*

10. Construction Support- OPTIONAL- May be included in subsequent contract amendment at the time of construction.

10.1. Design Support During Construction

- Attend a pre-construction meeting
- Provide ongoing consultation and interpretation of contract documents

- o Respond to Requests for Information (RFI) made by the Contractor as coordinated through the Resident Engineer
- o Perform periodic field visits at the request of the Resident Engineer
- o Provide design support to address unforeseen conflicts encountered in the field
- o Review change orders and make recommendations for approval
- o Review submittals and shop drawings and recommend revisions or acceptance

Deliverables:

- o Responses to submittals and RFIs

Since this work cannot be estimated, Consultant has provided a budget estimate based on typical levels of effort. This task shall be done on a time and material (T&M) basis. Consultant will notify City prior to full expenditure of budget. Efforts beyond budgeted amounts will require additional budget authorization.

10.2. Record Drawings

- o Review for completeness and accuracy marked-up drawings provided by the Resident Engineer.
- o Provide "as-built" record drawings on Mylar using the marked-up Contractor drawings.
- o Consultant has provided a budget for this task as an estimate only. Actual level of effort will be determined when red-lined plans are provided to the Consultant by City's construction manager.

Deliverables:

- o One (1) set of Mylar as-built drawings

11. Optional Tasks – NOT INCLUDED IN THIS CONTRACT SCOPE AND FEE

11.1. Field Percolation Testing

- o Perform field percolation tests in the two proposed detention pond areas:
 - o Perform a site reconnaissance to mark locations of our exploration. City will secure right-of-entry to the testing sites.
 - o Drill and prepare six percolation test holes (three at each detention pond sites) to a depth of about 5 feet below ground surface.
 - o Perform percolation tests in the test holes to measure percolation rates.
 - o Perform engineering analysis of the collected data.
 - o Include the measured percolation rates in the 100% geotechnical investigation report discussed above.

11.2. Right of Way Acquisition Support

- o Prepare individual acquisition exhibits on aerial photo background for use by City's right of way acquisition team for discussion with home owners.

- Install "show-me" stakes for proposed acquisition areas to assist City's right of way acquisition team when negotiating with property owners. All show-me stakes will be provided within a single 5-day period. Show-me stakes outside of this window can be provided as extra work.

Exhibit B
City of Morgan Hill
Hale Avenue Extension Project
MARK THOMAS & COMPANY, INC.
 1/25/2017

NTCS															Subcontractors							TOTAL COST																									
	Principal	Senior Project Manager	Senior PM (Director)	Senior Survey Manager	Senior Project Engineer	Senior Technical Engineer	Senior Technical Engineer (Structural)	Senior Engineer	Project Surveyor	Senior Survey Technician	Graphic Designer	Project Coordinator	Various Field Staff and Vehicle	Total Hours	Labor Cost	Expenses	Total	Pacific Geotechnical Engineering	Phoenix Design Group	YAC Transportation Consulting, Inc.	MRA Environmental and Consulting, Inc.	Subcontractor Up																									
100	Task 1: Project Management																																														
1. Project Management	8	80										16		104	\$22,712		\$22,712						\$22,712																								
Subtotal Phase 100	8	80	0	0	0	0	0	0	0	0	0	16	0	104	\$22,712	\$0	\$22,712	\$0	\$0	\$0	\$0	\$0	\$22,712																								
200	Task 2: Surveying																																														
1. 2.1 Photos and Legal Descriptions				30					85	250				365	\$54,650		\$54,650						\$54,650																								
2. 2.2 Supplemental Field Survey				4					8	24			24	60	\$12,184		\$12,184						\$12,184																								
Subtotal Phase 200	0	0	0	34	0	0	0	0	93	274	0	0	24	445	\$66,864	\$0	\$66,864	\$0	\$0	\$0	\$0	\$0	\$66,864																								
300	Task 3: Geotechnical Report																																														
1. Geotechnical Report		2			8									10	\$1,714		\$1,714	\$14,875				744	\$17,333																								
Subtotal Phase 300	0	2	0	0	8	0	0	0	0	0	0	0	0	10	\$1,714	\$0	\$1,714	\$14,875	\$0	\$0	\$0	\$744	\$17,333																								
400	Task 4: Easements																																														
1. Easements					4									12	\$1,568	\$12,000	\$13,568						\$13,568																								
Subtotal Phase 400	0	0	0	0	4	0	0	0	0	0	0	0	0	12	\$1,568	\$12,000	\$13,568	\$0	\$0	\$0	\$0	\$0	\$13,568																								
500	Task 5: Utility Coordination																																														
1. Utility Coordination		16			40				60					116	\$16,940		\$16,940						\$16,940																								
Subtotal Phase 500	0	16	0	0	40	0	0	0	60	0	0	0	0	116	\$16,940	\$0	\$16,940	\$0	\$0	\$0	\$0	\$0	\$16,940																								
600	Task 6: Meetings																																														
1. G.I. Project Coordination Meetings		16	3		16									35	\$6,803		\$6,803						\$6,803																								
Subtotal Phase 600	0	16	3	0	16	0	0	0	0	0	0	0	0	35	\$6,803	\$0	\$6,803	\$0	\$0	\$0	\$0	\$0	\$6,803																								
700	Task 7: Contract Documents																																														
1. 7.1. 20% PS&E Submittal		12	11		80	120	28	120		42				419	\$61,143		\$61,143						\$61,143																								
2. 7.2. 100% Submittal		12	6		60	120	8	120		24				330	\$30,746		\$30,746	26,020	18,000		2,301		\$79,057																								
Subtotal Phase 700	0	24	17	0	140	240	36	240	0	22	0	0	0	749	\$111,889	\$0	\$111,889	\$26,020	\$18,000	\$0	\$2,301	\$0	\$150,210																								
800	Task 8: Permitting Support																																														
1. Permitting Support		12			24									36	\$5,492		\$5,492				57,900	2,894	\$67,287																								
Subtotal Phase 800	0	12	0	0	24	0	0	0	0	0	0	0	0	36	\$5,492	\$0	\$5,492	\$0	\$0	\$0	\$57,900	\$2,894	\$67,287																								
SUBTOTAL PS&E PHASE HOURS															0	150	20	34	133	240	36	308	93	346	0	16	24	1527							1,527												
SUBTOTAL PS&E PHASE COST															\$2,156	\$33,750	\$4,580	\$11,340	\$36,656	\$37,920	\$5,488	\$36,816	\$14,624	\$42,558	\$0	\$1,856	\$2,128		\$214,592	\$12,000	\$246,592	\$14,875	\$26,020	\$18,000	\$57,900	\$5,940	\$311,111										
OPTIONAL TASKS																																															
1. CAD conversion																										4			8	16				5		36	\$5,916		\$5,916						\$5,916		
2. Specified coordination																													40	40								330	\$12,540		\$12,540						\$12,540
3. Contingency																																						30	\$0		\$0					\$12,280	

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

EXHIBIT B
MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
Expires June 30, 2017*

HOURLY CHARGE RATES

Engineering Services

Sr. Principal	\$388
Principal	\$357
Sr. Engineering Manager	\$313
Engineering Manager	\$267
Practice Area Leader	\$267
Sr. Project Manager	\$225
Sr. Technical Lead	\$225
Project Manager	\$186
Technical Lead	\$178
Sr. Project Engineer	\$158
Sr. Technical Engineer	\$158
Project Engineer	\$135
Design Engineer II	\$117
Design Engineer I	\$97
Sr. Technician	\$113
Technician	\$81
Intern	\$56

Survey Services

Sr. Survey Manager	\$210
Survey Manager	\$200
Sr. Project Surveyor	\$184
Project Surveyor	\$158
Sr. Surveyor	\$144
Surveyor	\$119
Lead Survey Technician	\$148
Sr. Survey Technician	\$123
Survey Technician	\$87
Survey Intern	\$70
Single Chief	\$128
Single Chainman	\$112
Apprentice	\$76
1 Person Field Crew	\$170
2 Person Field Crew	\$297
3 Person Field Crew	\$382

Urban Planning/Landscape Architecture Services

Sr. LAUD Division Manager	\$236
LAUD Division Manager	\$200
Sr. LAUD Project Manager	\$174
LAUD Project Manager	\$158
Sr. Project Landscape Architect	\$119
Project Landscape Architect	\$104
Landscape Designer	\$81
Intern	\$56

*Rates subject to escalation with new hourly rate schedule as of July 1, 2017

Page 1 of 2

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

EXHIBIT B
MARK THOMAS THOMAS COMPANY, INC.
CHARGE RATE SCHEDULE (K-1)
Expires June 30, 2017*

HOURLY CHARGE RATES

Special Services

Sr. Inspector	\$116
Inspector	\$82
Expert Witness	\$390
Strategic Consulting	\$390

Project Support/Coordination Services

Sr. Project Accountant	\$121
Project Accountant	\$98
Sr. Project Coordinator	\$116
Project Coordinator	\$93
Sr. Project Assistant	\$87
Project Assistant	\$62
Sr. Technical Writer	\$102
Technical Writer	\$64
Sr. Graphic Designer	\$109
Graphic Designer	\$78

OTHER DIRECT COSTS

Reimbursables including, but not limited to:	
Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

* Rates subject to escalation with new hourly rate schedule as of July 1, 2017

Page 2 of 2

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)

EXHIBIT C
SCHEDULE OF PERFORMANCE



EXHIBIT "2"

Dated October 1, 2019

SCOPE OF SERVICES

TASK 1. REVISE PLANS TO INCLUDE INTERIM IMPROVEMENTS AT THE HALE AVENUE/WEST MAIN STREET INTERSECTION:

See attached Exhibit showing interim improvements to be constructed with the Hale Avenue Extension

FEE: \$8,700 including subconsultant markup

TASK 2. REVISE PS&E TO INCLUDE BUILDING DEMOLITION OF PG&E MORGAN HILL SUBSTATION BUILDING 200 WEST MAIN STREET, HOUSES AT 220 AND 230 WARREN AVENUE

PS&E will include aerial exhibit showing buildings to be demolished in accordance with requirements of City Building Department. Estimated cost of demolition to be provided by City. City to provide any special inspection and reports for existing buildings necessary for the City to issue permits to demolition contractor.

FEE: \$8,700

TASK 3. PROVIDE DESIGN SERVICES DURING BIDDING

Mark Thomas will provide design services during bidding including responding to questions from the bidders, preparing Addendums to Bid Documents and reviewing Bid Results.

FEE: Hourly as requested by City- Estimated Budget \$8,300 TASK 4.

PROVIDE DESIGN SERVICES DURING CONSTRUCTION**TASK 4.1 ATTEND MEETINGS/ GENERAL SUPPORT**

When requested by the City, CM or other authorized representative, Mark Thomas will attend project meetings and respond to general telephone calls, electronic mail, or facsimile, and provide general (miscellaneous) project support. This task also covers general administrative work associated with coordination of subconsultants, progress reports, and maintenance of Project files.

TASK 4.2 RESPOND TO REQUESTS FOR INFORMATION (RFI'S)

When requested by the City, CM or other authorized representatives, Mark Thomas will respond to Contractor's RFI's and provide minor clarification of the Plans, Specifications, and Estimate (PS&E) documents for the Project.

TASK 4.3 PROJECT SITE VISITS

When requested by or with the approval of the City, CM or other authorized representatives, Mark Thomas will make site visits to observe the progress of the construction, meet with City or CM staff to identify work that does not conform to or is not following the intent of the contract PS&E documents. Written jobsite reports will be prepared and submitted to the City if conflicts or problems are identified during each jobsite visit. Mark Thomas shall notify the CM or authorized representative when Mark Thomas is present on the jobsite. Mark Thomas' personnel and equipment shall be in compliance with current City construction safety policies and procedures when visiting the jobsite.

TASK 4.4 REVIEW SHOP DRAWINGS/SUBMITTALS

When requested by or with the approval of the City, CM or other authorized representatives, Mark Thomas will review Shop Drawings and miscellaneous submittals from the Contractor for the Project. Mark Thomas shall review or take other appropriate action required by Contractor's submittals as requested by the City or CM. Review of submittals is limited to checking for submittal conformance with the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. Mark Thomas' review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Mark Thomas, of construction means, methods, techniques, sequences or procedures. Mark Thomas' review for conformance with contract documents of a specific item shall not indicate approval of an assembly of which the item is a component.

TASK 4.5 PREPARE CONTRACT CHANGE ORDER DOCUMENTS (CCO'S)

When requested by or with the approval of the City, CM or other authorized representatives, Mark Thomas shall prepare construction Contract Change Order (CCO) documents consisting of PS&E to the level of detail as needed, or as directed, for each request. Since Mark Thomas has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, Mark Thomas does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the City.

Because the level of effort to provide ongoing construction support services cannot be anticipated ahead of time, Mark Thomas and the other subconsultants working on the Mark Thomas team will perform services related to this task on a time and materials basis in an on-call fashion.



7270 HORRIF-1 FIRE-1 SECRET 1

MARK THOMAS.COM

TASK 4.6 PREPARE RECORD DRAWINGS (OPTIONAL)

Once Mark Thomas has received the field mark-up plans from the project CM, Record Drawings can be prepared as an optional task. A budget has been included for reference for this task. Since the actual required level of effort for this task cannot be anticipated ahead of time, the work to be performed by Mark Thomas and subconsultants will be done on a time and materials basis. An estimated budget for this task may be developed once the filed mark-up plans have been received.

Deliverables

- Draft Record Drawings for CM review (1 CD, 1 hard copy)
- Final Record Drawings (2 hardcopy, 1 CD with DGN and TIFF files)

FEE: Hourly as requested by City- Estimated Budget \$73,900

TOTAL ESTIMATED FEE: \$99,600

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

Sincerely,

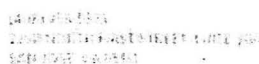
MARK THOMAS



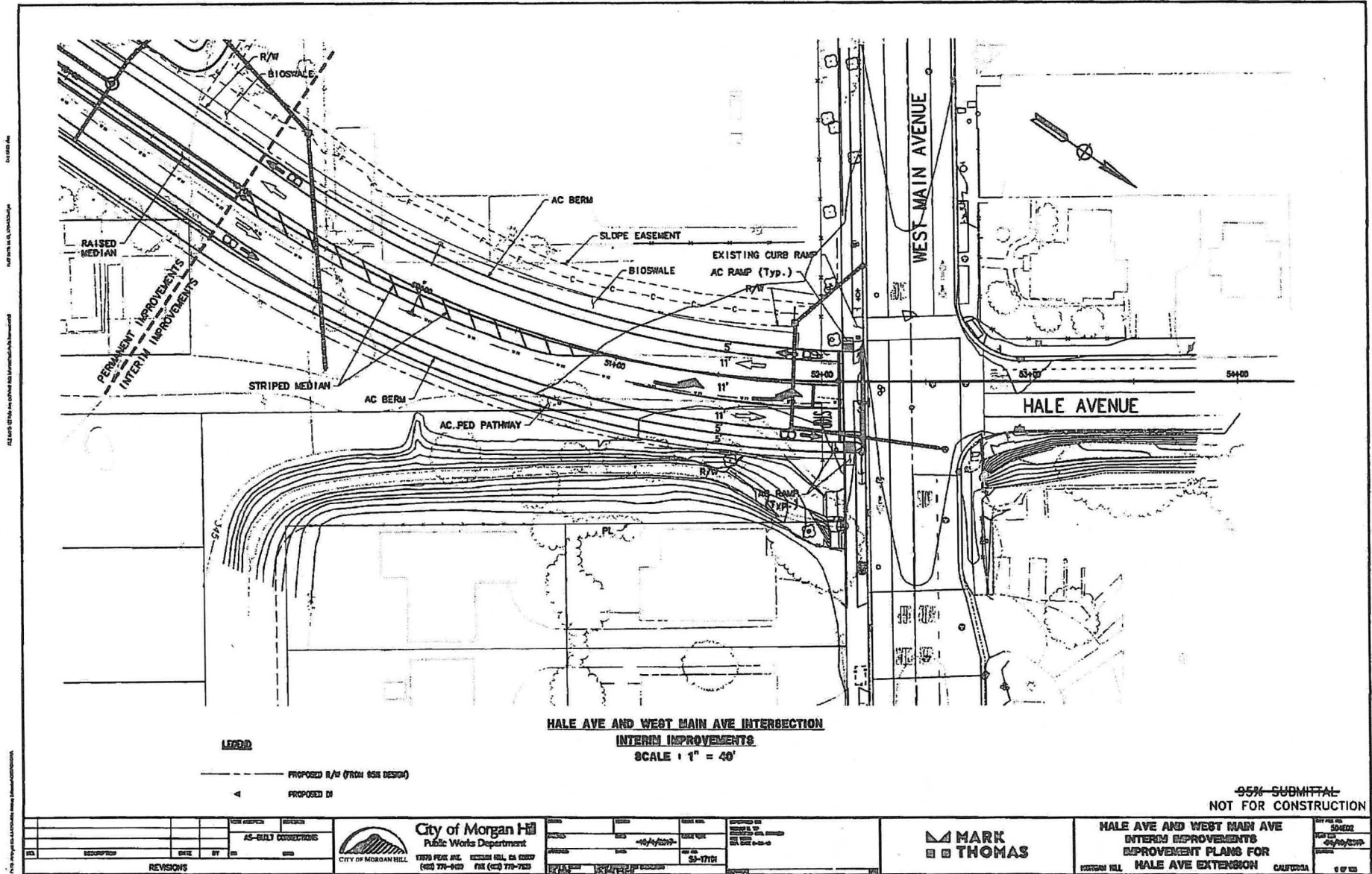
Sasha Dansky, PE
Principal/Vice President



Mike Cooper, PE
Senior Project Manager



MARK THOMAS.COM



COST PROPOSAL FOR PROJECT SCOPE - Morgan Hill: Hale Avenue Extension Project AM3

	Mark Thomas													Subconsultants							TOTAL COST	
	Principal	Sr. Engineering Manager	Sr. Project Manager	Sr. Project Engineer	Project Engineer	Design Engineer II	Design Engineer I	Sr. Project Coordinator	Sr. Project Assistant	Sr. Graphic Manager	Sr. Graphic Designer	Graphic Designer	Total Hours	Total MT Cost	Y&C DBE	TRANSPORTATION DBE	GEOLOGIC DBE	PHOENIX DESIGN GROUP Non-DBE	PENNINO DBE	WRA DBE		Sub Mark Up 10%
	\$415	\$351	\$250	\$177	\$153	\$134	\$108	\$129	\$100	\$155	\$134	\$108										
1.0 INTERIM HALE AVENUE/WEST MAIN INTERSECTION PLANS																						
1.1 Interim Hale Avenue/West Main Intersection Plans			4			24	16						44	\$5,944	2,500	-	-	-	-	\$250	\$8,694	
Subtotal Phase 1	0	0	4	0	0	24	16	0	0	0	0	0	44	\$5,944	\$2,500	\$0	\$0	\$0	\$0	\$0	\$250	\$8,694
2.0 BUILDING DEMO OF PG&E SUBSTATION																						
2.1 Building Demolition of PG&E Substation	2		16			8	16	8					50	\$8,662	-	-	-	-	-	\$0	\$8,662	
Subtotal Phase 2	2	0	16	0	0	8	16	8	0	0	0	0	50	\$8,662	\$0	\$0	\$0	\$0	\$0	\$0	\$8,662	
3.0 DESIGN SERVICES DURING BIDDING																						
3.1 Design Services During Bidding			16			16							32	\$6,144	1,000	-	1,000	-	-	\$200	\$8,344	
Subtotal Phase 3	0	0	16	0	0	16	0	0	0	0	0	0	32	\$6,144	\$1,000	\$0	\$1,000	\$0	\$0	\$200	\$8,344	
4.0 DESIGN SERVICES DURING CONSTRUCTION																						
4.1 Attend Meetings/General Support			60			40							100	\$20,360	-	-	-	-	-	\$0	\$20,360	
4.2 Respond to Requests for Information			40			40							80	\$15,360	-	-	1,000	-	-	\$100	\$16,460	
4.3 Project Site Visits			20			20							40	\$7,680	-	2,000	1,000	-	-	\$300	\$10,980	
4.4 Review Shop Drawings/Submittals			20			20							40	\$7,680	2,000	2,000	2,000	1,000	-	\$700	\$15,380	
4.5 Prepare Construct Change Order Documents			8					20					28	\$4,580	-	-	-	-	-	\$0	\$4,580	
4.6 Prepare Record Drawings							16						16	\$1,728	1,000	1,000	1,000	1,000	-	\$400	\$6,128	
Subtotal Phase 4	0	0	148	0	0	120	16	20	0	0	0	0	304	\$57,388	\$3,000	\$5,000	\$5,000	\$2,000	\$0	\$1,500	\$73,888	
TOTAL HOURS	2	0	184	0	0	168	48	28	0	0	0	0	430		0	0	0	0	0		430	
Anticipated Salary Increases														\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
OTHER DIRECT COSTS														\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
TOTAL COST	\$830	\$0	\$46,000	\$0	\$0	\$22,512	\$5,184	\$3,612	\$0	\$0	\$0	\$0		\$78,138	\$6,500	\$5,000	\$6,000	\$2,000	\$0	\$1,950	\$99,588	

7/9/2019



RATE SCHEDULE (N-1)

EXHIBIT A

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2020*

HOURLY CHARGE RATES

Engineering Services

Intern	\$62
Technician	\$96
Design Engineer I	\$108
Sr. Technician	\$131
Design Engineer II	\$134
Project Engineer	\$153
Sr. Project Engineer	\$177
Sr. Technical Engineer	\$177
Project Manager	\$205
Technical Lead	\$205
Sr. Project Manager	\$250
Sr. Technical Lead	\$250
Engineering Manager	\$299
Practice Area Leader	\$299
Sr. Engineering Manager	\$351
Principal	\$415

Urban Planning/Landscape Architecture Services

Intern	\$62
Landscape Designer	\$112
Landscape Architect	\$147
LAUD Project Manager	\$188
Sr. LAUD Project Manager	\$212
LAUD Division Manager	\$242
Sr. LAUD Division Manager	\$263

District Management Services

Inspector - Apprentice	\$77
Inspector	\$108
Sr. Inspector	\$131
Assistant Sanitary Engineer	\$147
Associate Sanitary Engineer	\$169
Deputy District Manager	\$313

Construction Management Services

ARE/Construction Inspector	\$165
Resident Engineer	\$245

Survey Services

Survey Intern	\$75
Survey Technician	\$110
Sr. Survey Technician	\$125
Surveyor	\$125
Sr. Surveyor	\$147
Lead Survey Technician	\$153
Project Surveyor	\$163
Sr. Project Surveyor	\$190
Survey Manager	\$210
Sr. Survey Manager	\$231
Survey Division Manager	\$282
Single Chief	\$152
Single Instrumentman	\$140
Single Chainman	\$127
Apprentice	\$90
1 Person Field Crew	\$175
2 Person Field Crew	\$275
3 Person Field Crew	\$375

Project Support/Coordination Services

Project Assistant	\$77
Technical Writer	\$78
Sr. Project Assistant	\$100
Project Coordinator	\$102
Graphic Designer	\$108
Sr. Technical Writer	\$113
Project Accountant	\$115
Sr. Project Coordinator	\$129
Sr. Graphic Designer	\$134
Sr. Project Accountant	\$142
Sr. Graphic Manager	\$155

Grant Writing Services

Funding Specialist	\$130
Sr. Funding Specialist	\$160

Special Services

Expert Witness	\$420
Strategic Consulting	\$420

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

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

*Rates subject to escalation with new hourly rate schedule as of July 1, 2020

PAGE 1 OF 1

Attachment: Third Amendment-Mark Thomas & Company (2491 : Third Amendment with Mark Thomas & Company)



CERTIFICATION OF CORPORATE AUTHORITY

Mark Thomas

The undersigned, Matt Brogan, Secretary of Mark Thomas. (the "Company"), HEREBY CERTIFIES as follows:

He is the duly elected Secretary of the Company, a California corporation.

At a meeting of the Board of Directors of the Company on June 28th, 2018, the following resolution was adopted:

RESOLVED: That certain individuals of this corporation, acting singly, be and hereby are authorized at any time and from time to time, to enter into contracts for the provision of services by the Company as follows:

1. Ed Noriega (Associate, Division Manager) is authorized up to the amount of \$500,000, or as delegated.
2. Shawn O'Keefe (Principal, Vice President), Zach Siviglia (Principal, Vice President) and Jim Howells (CFO, COO) are authorized up to the amount of \$3,000,000, or as delegated.
3. Matt Brogan (Principal, Vice President), Sasha Dansky (Principal, Vice President), and Richard Tanaka (Principal, Vice President) are authorized up to the amount of \$5,000,000, or as delegated.
4. Robert Himes (Principal, President, CEO) is authorized up to the amount of \$10,000,000, or as delegated.
5. Any contract in excess of \$10,000,000 is subject to the review of the Board of Directors and will be signed by Robert Himes (Principal, President, CEO).

According to the records of the Company in my possession as of this date, the above is a true and correct copy of said resolution, said resolution has not been amended or repealed, and is in full force and effect.

DATED July 24, 2018

Matt Brogan, Secretary



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

APPROVE SECOND AMENDMENT FOR SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MOTT MACDONALD FOR THE TENNANT AVENUE SEWER PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Second Amendment, extending the term, for Services Agreement for Design Professionals with Mott MacDonald, Inc. for the Tennant Avenue Sewer Upgrade Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

The Capital Improvement Program (CIP) identified the Tennant Avenue Sewer Upgrade Project for FY 2017-18. The Dunne Avenue sewer upgrade project was not included in the CIP but was identified in the 2017 Sewer Master Plan as a near-term project. Thus, on November 1, 2017, City Council approved a professional services agreement with Mott MacDonald for \$287,800 to design both the Tennant Avenue and Dunne Sewer projects.

During the design of the project, it was decided that the two projects should be designed separately in order to expedite the Tennant Avenue Sewer portion as it is near full capacity. The Dunne Avenue sewer portion was then realigned to flow along 5th Street to Depot and connect to the new Hale Lumber Development project. Thus, the development project would construct a portion of the sewer main under the railroad tracks to Depot Street, which becomes a substantial savings to the City. Ruggeri Jensen Azar is currently designing the Dunne Avenue portion which is on track to be constructed in 2020.

The first amendment for the Tennant Avenue Sewer Upgrade Project was executed by the City Manager on December 4, 2018 to extend the term through December 31, 2019. Mott MacDonald completed the Tennant Avenue sewer design in May 2019, which was then awarded to KJ Woods Construction for \$2,148,000 in July 2019. The scope of work

consists of enlarging approximately 2,200 linear feet of 18-inch diameter pipe with a 27-inch diameter sewer pipe, which crosses beneath the railroad tracks.

The project is currently 35% complete and Mott MacDonald's services are still required in order to complete the project. There is approximately \$34,000 remaining on their contract for support services, but the contract expires on December 31, 2019. Therefore, staff recommends that a Second Amendment with Mott MacDonald be executed in order to extend their support services through the end of the project. No additional funding is being requested.

COMMUNITY ENGAGEMENT: Inform

Staff has been providing routine project status updates through the City's website and social media and will continue posting updates throughout construction. All affected or impacted property owners and businesses have been contacted and consulted prior to construction.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with this second amendment. This would terminate construction support services from the design firm, thus leaving these responsibilities to staff.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council approved the CIP for Fiscal Years 2016-17 through 2021-22 which identifies the Tennant Avenue Sewer improvements.

On November 1, 2017, City Council approved a professional services agreement with Mott MacDonald for \$287,000.

On July 17, 2019, City Council awarded the Tennant Avenue Sewer Main Project to KJ Woods for \$2,148,000.

FISCAL AND RESOURCE IMPACT:

No fiscal impact, as this is an extension of the contract term only. The initial agreement approved by City Council authorizes the City Manager to extend the term for one year. That authority was exercised via the first amendment and any future term extensions are subject to City Council approval.

CEQA (California Environmental Quality Act):

Categorical Exemption.

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15303(d) of the CEQA Guidelines (New construction or conversion of small structures), as the subject work involves installation of new and the replacement of sewer pipe segments within an existing paved roadway.

LINKS/ATTACHMENTS:

1. Project Location Map-Tennant Sewer

2. Second Amendment-Mott MacDonald LLC 12-18-19



Attachment: Project Location Map-Tennant Sewer (2584 : Second Amendment for Mott MacDonald)

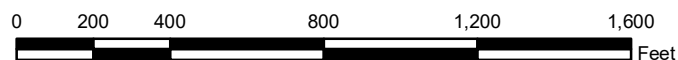


CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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TENNANT AVENUE SEWER MAIN PROJECT



SECOND AMENDMENT TO AGREEMENT MOTT MACDONALD, LLC

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MOTT MACDONALD, LLC, a Delaware limited liability company ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of November 17, 2017 for consultant services for a maximum compensation of Two Hundred Eighty-Seven Thousand Eight Hundred and No/100 Dollars (\$287,800.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of December 4, 2018. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS and the First Amendment thereto are attached as Exhibit "2" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, as attached as Exhibit "2," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from November 17, 2017, until December 31, 2020."

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Signatures on the Next Page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

MOTT MACDONALD, LLC

Donald A. Larkin, City Attorney

Date: _____

By: Chris Metzger

Title: SR. VICE PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 11/18/2019

By: D.P. White

Title: _____

Print Name and Title of Signer.

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

Date: 11

Attachment: Second Amendment-Mott MacDonald LLC 12-18-19 (2584 : Second Amendment for Mott MacDonald)

**FIRST AMENDMENT TO AGREEMENT
MOTT MacDONALD, LLC**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on December 4, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MOTT MacDONALD, LLC, a Delaware limited liability company ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement.

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on November 1, 2017.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of November 17, 2017, for consultant services for a maximum compensation of TWO HUNDRED EIGHTY-SEVEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$287,800.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS"). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from November 17, 2017, until December 31, 2019. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"9. **Compliance with Law.**

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

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

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

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

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

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

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

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

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

"20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST

City Clerk

Date:

12/11/18

APPROVED AS TO FORM:

City Attorney

Date:

12-3-18

CITY OF MORGAN HILL

City Manager

Date:

12/4/18

MOTT MacDONALD, LLC

By:

Title:

CHRIS METZGER
 SR. VICE PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

11/20/2018

By:

Title:

D.P. WHITE
 ASSISTANT SECRETARY

Print Name and Title of Signer.

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

Date:

11/27/2018

EXHIBIT "1"

**SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
MOTT MacDONALD, LLC**

THIS AGREEMENT is entered into and becomes effective on 11/17/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Mott MacDonald, LLC, a Delaware limited liability company ("CONSULTANT"), duly authorized to do business in California and will remain so during the term of this Agreement, hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on November, 1, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be for surveying, site investigation, preparing plans, specifications and estimates, obtaining all required permits including railroad easements and preliminary permits, bidding support and construction support services for the upgrade of sewer mains at two locations. The project work that is located along East Dunne Avenue consists of approximately 1,000' of new 12" sewer main between existing sewer piping on Monterey Road and along the east side of the Union Pacific Railroad right-of-way. The second location is on Tennant Avenue between existing sewer piping on Monterey Road and Railroad Avenue. The second location consists of replacing/enlarging approximately 2,200' of existing 18" piping with new 24" sewer piping. The scope shall include evaluating and recommending potential implementation of trenchless construction methodologies for this segment to replace the existing piping (i.e. pipe bursting or pipe grinding) and as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$287,800.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed two-hundred eighty-seven thousand and eight hundred dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's

judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.
- 7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Tracie Sakihara, P.E.
Senior Associate and Principal Project Manager
181 Metro Drive,
San Jose, California 95110

Address of CITY is as follows:

David Gittleson P.E.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

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

15. **Maintenance of Records.**

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

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

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

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

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

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

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

20. **Defense and Indemnification.**

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

20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this

Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

- 20.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 20.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

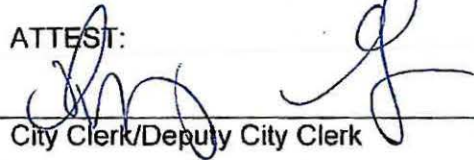
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

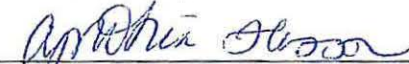
ATTEST:


 City Clerk/Deputy City Clerk

for Michelle Wilson
 Print Name

Date: 7/20/17

APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin
 Print Name

Date: 11-3-17

CITY OF MORGAN HILL

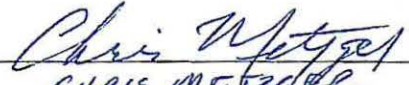

 City Manager

Christina J. Turner
 Print Name

Date: 11-17-17

MOTT MacDONALD, LLC

By:


 CHRIS METZGER

Title:

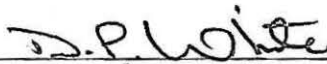
SR. VICE PRESIDENT

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

Date:

Oct 24, 2017

By:


 D.P. WHITE

Title:

ASSISTANT SECRETARY

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

Date:

10/24/2017

**EXHIBIT A
SCOPE OF SERVICES**



Exhibit "A"

Proposed Scope of Services

East Dunne Avenue and Tennant Avenue Sewer Mains Project Design Services City of Morgan Hill, California

Objective

Mott MacDonald (MM) will provide remedial pipe design and associated Contract Documents for the East Dunne Avenue and Tennant Avenue Sewer Mains Project. The project includes approximately 3,200 linear feet of new and replaced or enlarged sewer, within the City of Morgan Hill wastewater collection system as follows:

- East Dunne Avenue – approximately 1,000 LF of new 12-inch sanitary sewer between Monterey Road and the sewer manhole on the east side of the Union Pacific Railroad right-of-way.
- Tennant Avenue – approximately 2,200 LF of 24-inch sanitary sewer between Monterey Road and the sewer manhole on the east side of the Union Pacific Railroad right-of-way.

The sewer project includes the design of upsizing the pipelines using open cut, pipe bursting, or other trenchless methods, where appropriate.

The specific steps of this proposed scope of services are to:

- Develop plans, specifications, and cost estimates ready for bid, which include:
 - Project management, including meetings, site visits, and agency coordination
 - Preparation of 30% 60%, 90%, 100%, and final design submittals
 - Geotechnical investigation and report
 - Surveying of project areas
 - Potholing in critical areas of unknown utility depths
 - Preparation of UPRR permit applications for field survey, for utility potholing, and for utility crossings.
- Bid support
- Office support of construction

The City desires a total project construction cost of approximately \$2.1 million: \$480,000 for East Dunne Avenue and \$1.6 million for Tennant Avenue. The goal is to complete contract document preparation for the construction contract by May 2018 based upon initiating design work by the end of October 2017.



Proposed Tasks

The proposed scope of services will include the following tasks:

0. Project Management Services

- 0.A General project management includes project coordination, maintaining project schedule, internal filing, assigning team member responsibilities, invoicing, and monthly progress reports.

1. Prepare Plans, Specifications, and Estimates

- 1.A Topographic Field Survey and Base Mapping
 - a. Prepare, submit, and obtain UPRR Permit to be on Railroad Property for Nonintrusive Civil Engineering Survey Work.
 - b. Establish horizontal and vertical control. Horizontal Control will be on California Co-ordinates, Zone 3. Vertical Control will be NAVD 88.
 - c. Perform topographic survey and data reduction to include three-point cross-sections every 50 feet in the streets.
 - d. Field locate and plot existing curbs, driveways, all surface visible utilities and pavement markings, inlets, manholes, cleanouts, valves, vaults, boxes, traffic signals, and utility poles.
 - e. Compile base mapping at 1"=20' horizontal scale.
 - f. Provide rectified aerial photos.
- 1.B Coordination with Utility Companies. Review City record mapping to verify potential utilities existing within project limits. Request record data from the following utility companies: PG&E, AT&T, Frontier Communications, Charter Communications, Sprint, and Level 3.
- 1.C Design Meetings and Site Visits.
 - a. Attendance at four (4) City meetings (Kickoff, 60%, 90%, and 100% reviews) by the project manager and project engineer and other Project Team members as needed.
 - b. Conduct two (2) site visits.
- 1.D Site Investigation.
 - 1.D.1. Geotechnical Investigations and Report
 - a. Field Exploration
 - i. Exploratory Borings - Drill, log, and sample four (4) exploratory borings in the project area, outside of UPRR right-of-way, using conventional truck-mounted hollow-stem auger drilling equipment.



The borings, approximately 20 feet in depth, will extend several feet below the assumed invert depths of the sewers.

- ii. Utility Clearance – Surface locate utilities and mark boring locations at least two working days prior to subsurface explorations and notify USA.
- iii. Permits, Site Access and Disposal of Drill Spoils - Subsurface explorations permitted and backfilled with cement grout in accordance with the Santa Clara Valley Water District guidelines. Site restoration is limited to general clean-up.

b. Laboratory Testing

To evaluate the index and engineering properties of the site soils, the following laboratory tests are proposed:

- i. In-situ moisture/density tests, ASTM D2937 test procedure
- ii. Grain size distribution tests, ASTM D1140
- iii. Atterberg Limit test, ASTM D4318

c. Report Preparation. Characterize subsurface conditions for new utility installation, replacement, and upsizing using data obtained from the field investigations and laboratory testing program. The report will include the following items:

- i. Site plan showing exploratory boring locations
- ii. Log of exploratory borings, including depth to groundwater, if encountered
- iii. Laboratory test results
- iv. Discussion of findings, including site conditions, subsurface conditions, mapped geologic conditions for the area, and potential geotechnical impacts.

1.D.2 Potholing for Utility Verification.

- a. Obtain UPRR permit for site investigation, if any potholes are required within the UPRR right-of-way.
- b. Perform utility potholing at up to 10 locations within the project limits. Locations to be determined.
- c. Restore pothole locations with class 2 aggregate base backfill and cold patch asphalt.

1.E Preparation of 30%, 60%, 90%, and Draft 100% Drawings, Technical Specifications, Construction Costs, & Schedule

1.E.1 Preparation of 30% Design Submittal.

- a. Review Available Information, including:
 - i. CCTV logs and videos of existing sewers.
 - ii. City record drawings.
 - iii. City Standard drawings and specifications.
 - iv. City Sewer System Master Plan (dated October 2017)
 - v. Data review for trenchless evaluation.



- vi. Review record data from the following utility companies: PG&E, AT&T, Frontier Communications, Charter Communications, Sprint, and Level 3.
- vii. Call UPRR Communication Department to confirm existence of communication lines and obtain Ticket Number.
- viii. Prepare summary memorandum of findings.
- b. Set pipeline alignment
- c. Preparation of preliminary 30% plan-view only sheets for City review and comment.
- d. Submittal of 30% plans for review.
- 1.E.2 Preparation of 60% Design Submittal.
 - a. Preparation of 60% drawings including:
 - i. Reviewing and addressing City comments from 30% design submittal
 - b. Preparation of 60% outline technical specifications
 - c. Preparation of 60% construction cost estimate
 - d. Preparation of UPRR Crossing Applications for each crossing (total 2)
 - e. Peer review and QA/QC review of 60% bid document submittal
 - f. Submittal of 60% bid documents for review including forwarding plans to permitting and outside agencies
- 1.E.3 Preparation of 90% Design Submittal.
 - a. Preparation of draft 90% drawings including:
 - i. Reviewing and addressing City comments from 60% design submittal.
 - ii. Details, connections to existing pipelines, bedding and trench restorations, etc.
 - b. Preparation of draft bypass plans and traffic control plans
 - c. Preparation of draft 90% technical specifications.
 - d. Preparation of draft 90% construction cost estimate.
 - e. QA/QC review of draft 90% bid document submittal including constructability and biddability reviews
 - f. Submittal of draft 90% bid documents for review including forwarding plans to permitting and outside agencies
- 1.E.4 Preparation of draft 100% Submittal.
 - a. Preparation of draft 100% drawings including:
 - i. Reviewing and addressing City comments from 90% design submittal.
 - ii. Details, connections to existing pipelines, bedding and trench restorations, draft bypass plans, traffic control plans, etc.
 - b. Preparation of draft 100% technical specifications.
 - c. Preparation of 100% draft construction cost estimate.
 - d. QA/QC review of draft 100% bid document submittal including constructability and biddability reviews.



- e. Submittal of draft 100% bid documents for review including forwarding plans to permitting and outside agencies.
- 1.F Preparation and implementation of permit applications required for the project (See also 1.A, 1.E.2.d).
- 1.G Submit final plans on mylar and technical specifications for public bidding.
- 1.G.1 Finalize drawings, technical specifications, construction costs, and schedule.
- 1.G.2 Submit contract bid documents to City for printing.
- 1.H Provide electronic files of plans in ACAD format and technical specifications in MS Word format.
- 2. Bidding Support.
 - 2.A Attendance at the pre-bid conference.
 - 2.B Response to bidder questions.
 - 2.C Assistance in addenda preparation (assume 2).
 - 2.D Preparation of conformed contract documents (optional).
- 3. Construction Support.
 - 3.A Response to RFIs. Review and respond up to three (3) RFI's.
 - 3.B Submittal reviews. Review and respond up to forty (40) shop drawing submittals.
 - 3.C Change order reviews. Assistance with review and response to up to three (3) change order requests.
 - 3.D Monthly construction site visits. Conduct three (3) site visits.
 - 3.E Attendance at eight (8) weekly construction meetings including the pre-construction conference.
 - 3.F Prepare mylar record drawings based on Contractor's redlines.

Assumptions:

- City to provide on-site inspectors during construction.



- Work related to environmental studies, such as CEQA, and environmental permitting will be performed by the City or by its consultant.
- It is assumed that this project is considered an update to existing lines and facilities under the linear underground project (LUP) not covered by the NPDES general permit for stormwater discharges associated with construction activity. Therefore, preparation of a stormwater pollution prevention plan (SWPPP) is not included in this scope.
- No encroachment permit fees will be required by the City of Morgan Hill.
- City to provide a nearby location to store drums of spoils generated during exploratory boring drilling, prior to disposal.
- City to provide general conditions and front end of specifications.
- The City of Morgan Hill will coordinate site access/permission to enter private properties if necessary.
- Fee proposal includes 3 days of potholing for a maximum of 10 potholes.

Items Excluded from Scope of Work:

- Assessment of environmental characteristics at the project sites, particularly those involving hazardous substances.
- Disposal of hazardous materials.
- Necessary materials testing.
- Preparation of permit applications other than those listed in the scope of work.
- Permit application fees or any other fees that may be required by regulatory agencies, including rush fees, UPRR flagging costs, and Railroad Protective Liability Insurance.
- Potholing for utility verification beyond the 10 potholes included.
- Right-of-entry onto property.
- Preparation of property acquisition maps, surveying for easements and description for additional rights-of-way talking for implementation of the proposed project.
- On-site inspection during construction, including tunneling inspection.

Proposed Budget

These services will be performed on a time and materials, reimbursable, not to exceed fee basis. The fee proposed to perform the services described above is \$287,800. A detailed fee breakdown is provided as an attachment.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Attachment: Second Amendment-Mott MacDonald LLC 12-18-19 (2584 : Second Amendment for Mott MacDonald)



Schedule of Charges

Mott MacDonald 2017-18 Hourly Rates

Role	Hourly Rate
Project Principal	\$ 260.00
Project Manager	\$ 185.00
Project Controls & Quality Assurance	\$ 260.00
Project Engineer	\$ 135.00
Tunnel Expert	\$ 290.00
UPRR Expert	\$ 225.00
Traffic Engineer	\$ 175.00
Engineer III	\$ 120.00
CAD/GIS	\$ 110.00
Administrative Staff	\$ 90.00

*Hourly rates effective through December 31, 2018 and are subject to 3% annual increase.

* Subconsultant costs will be reimbursed at actual cost plus 5%.
Other direct costs will be billed at actual cost plus 10%.

Attachment: Second Amendment-Mott MacDonald LLC 12-18-19 (2584 : Second Amendment for Mott MacDonald)

EXHIBIT C
SCHEDULE OF PERFORMANCE

Attachment: Second Amendment-Mott MacDonald LLC 12-18-19 (2584 : Second Amendment for Mott MacDonald)



Proposed Schedule

The design will be completed within seven (7) months of receipt of authorization to proceed, allowing for City review of progress submittals as noted below, and assuming the requested background information is available to MM at the date of authorization to proceed. The following interim submittals are proposed (days noted are calendar days):

30% plan-view only submittal (1-week City review):	6 weeks after NTP
60% workshop submittal (1-week City review):	12 weeks after NTP
90% PS&E submittal (2-week City review):	17 weeks after NTP
100% PS&E submittal (1-week City review):	22 weeks after NTP
Final PS&E submittal for bid:	25 weeks after NTP (May 2018)

The schedule above assumes that the UPRR utility crossing permits are received within 45 days. UPRR utility crossing permits are anticipated to be submitted between the receipt of 60% City review comments and the 90% PS&E submittal.



CERTIFICATE OF LIABILITY INSURANCE

2.b

Page 1 of 2

DATE (MM/DD/YYYY)

06/22/2018

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

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

PRODUCER
Willis of New Jersey, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 372305191 USA

CONTACT
NAME:
PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378
E-MAIL: certificates@willis.com
ADDRESS:

INSURED
Mott MacDonald LLC
111 Wood Avenue South
Iselin, NJ 088304112

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Fireman's Fund Insurance Company	21873
INSURER B: American Automobile Insurance Company	21849
INSURER C: Underwriters at Lloyd's London	15792
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES

CERTIFICATE NUMBER: W6562679

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY	Y Y	MZXB0988373	06/30/2018	06/30/2019	EACH OCCURRENCE \$ 2,000,00
	☐ CLAIMS-MADE ☒ OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,00
						MED EXP (Any one person) \$ 10,00
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 2,000,00
A	☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y Y	MZXB0988373	06/30/2018	06/30/2019	GENERAL AGGREGATE \$ 2,000,00
						PRODUCTS - COMP/OP AGG \$ 2,000,00
	☐ UMBRELLA LIAB ☐ EXCESS LIAB					COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,00
	☐ OCCUR ☐ CLAIMS-MADE					BODILY INJURY (Per person) \$
	DED RETENTION \$					BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N No	SCW0029061801	06/30/2018	06/30/2019	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					PER STATUTE OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. EACH ACCIDENT \$ 1,000,00
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,00
C	Professional Liab.		B080120388P18	06/30/2018	06/30/2019	E.L. DISEASE - POLICY LIMIT \$ 1,000,00
						Per Claim \$1,000,000
						Per Aggregate \$1,000,000

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

Re: East Dunne and Tennant Avenue Sewer Mains Project, Mott MacDonald Project No. 376483 (NCA Division, West Unit).

The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are Additional Insureds as respects to General Liability and Auto Liability as per written contract or agreement.

CERTIFICATE HOLDER

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

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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- (3) Incurs a covered total loss;

we will pay the greater of:

- (a) The actual cash value, as determined by us, of the damaged or stolen property as of the time of the total loss; or
- (b) The outstanding indebtedness under the initial finance agreement for the covered auto and its equipment.

As used here, **outstanding indebtedness** means the amount you owe on the finance agreement at the time of total loss:

- (i) Less any amounts representing taxes, overdue payments, penalties, interest, or charges resulting from overdue payments, additional mileage, excess wear and tear, or lease termination fees; and
- (ii) Less any administrative costs or overhead fees assessed by the finance company who has leased the covered auto to you; and
- (iii) Less security deposits not returned by the lessor; and
- (iv) Less costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (v) Less carry-over balances from previous loans or leases.

V. Two or More Deductibles

1. **Section III - Physical Damage Coverage D. Deductible**, of form CA0001 (if attached to this policy), the following is added:

If another Fireman's Fund Insurance Company policy or coverage form that is not an automobile policy or coverage form applies to the same accident or loss, the following applies:

- (1) If the deductible under this **Business Auto Coverage Form** is the lesser (or least) deductible, it will be waived.
- (2) If the deductible under this **Business Auto Coverage Form** is not the lesser (or least) deductible, it will be reduced by the amount of the lesser (or least) deductible.

2. **Section IV - Physical Damage Coverage, D. Deductible** of form CA0020 (if attached to this policy), the following is added:

If another Fireman's Fund Insurance Company policy or coverage form that is not an automobile policy or coverage form applies to the same accident or loss, the following applies:

- (1) If the deductible under this **Motor Carrier Coverage Form** is the lesser (or least) deductible, it will be waived.
- (2) If the deductible under this **Motor Carrier Coverage Form** is not the lesser (or least) deductible, it will be reduced by the amount of the lesser (or least) deductible.

All other terms and conditions of the policy remain unchanged.

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Willis of New Jersey, Inc.		NAMED INSURED Mott MacDonald LLC 111 Wood Avenue South Iselin, NJ 088304112	
POLICY NUMBER See Page 1			
CARRIER See Page 1	NAIC CODE See Page 1	EFFECTIVE DATE: See Page 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

General Liability and Auto Liability policies shall be Primary and Non-Contributory with any other insurance in force for or which may be purchased by Additional Insureds as agreed to by written contract.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability and Auto Liability as agreed to by written contract.

Waiver of Subrogation applies in favor of Additional Insureds with respects to Worker's Compensation as agreed to by written contract for all states and as permitted by law.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 04 03 06

(Ed. 04-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2.00% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization	Job Description	Associated Job Premium
Blanket Waiver of Subrogation as required by written contract.		

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **06/30/2018**
Insured **Mott Macdonald Group Inc**

Policy No. **SCW0029061801**
Insurance Company **American
Automobile Insurance Company**

Endorsement No.
Premium

Countersigned By _____

WC 04 03 06
(Ed. 04-84)

Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization - CG 20 10 04 13

Policy Amendment(s) Commercial General Liability

Insured: Mott MacDonald Group, Inc.

Policy Number: MZX80988373

Producer: Willis of New Jersey, Inc.

Effective Date: 06/30/2018

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

Schedule

Name Of Additional Insured Person(s) Or Organization(s)

Any owner, lessee or contractor for whom you are performing operations when you and such owner, lessee or contractor have agreed in writing in a contract or agreement that such owner, lessee or contractor should be added as an additional insured on your policy.

Location(s) Of Covered Operations

Locations that are listed in the written contracts or agreements stated on the left side of this SCHEDULE.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to **bodily injury or property damage** occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the Fireman's Fund Insurance Companies as named in the policy

Secretary

President

2. That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Additional Insured - Owners, Lessees or Contractors - Completed Operations - CG 20 37 04 13

Policy Amendment(s) Commercial General Liability

Insured: Mott MacDonald Group, Inc.

Policy Number: MZX80988373

Producer: Willis of New Jersey, Inc.

Effective Date: 06/30/2018

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

Products/Completed Operations Liability Coverage Part

Schedule

Name Of Additional Insured Person(s) Or Organization(s)

Any owner, lessee or contractor for whom you are performing operations when you and such owner, lessee or contractor have agreed in writing in a contract or agreement that such owner, lessee or contractor should be added as an additional insured on your policy.

Location And Description Of Completed Operations

Locations that are listed in the written contracts or agreements stated on the left side of this SCHEDULE.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for **bodily injury** or **property damage** caused, in whole or in part, by your work at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the **products-completed operations hazard**.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are

required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the Fireman's Fund Insurance Companies as named in the policy

Secretary

President

Policy Number: MZX80988373

MultiCover® - CG 71 58 01 14

Policy Amendment(s) Commercial General Liability Coverage Form

Your Commercial General Liability Coverage Form is revised as follows:

1. Broadened Named Insured

A. SECTION II - WHO IS AN INSURED, item 3., is deleted and replaced by the following:

3. Any organization that you own at the inception of this policy, or newly acquire or form during the policy period, and over which you maintain during the policy period majority ownership or majority interest, will qualify as a Named Insured if:

- There is no other similar insurance available to that organization; and
- The first Named Insured shown in the Declarations has the responsibility of placing insurance for that organization; and
- That organization is incorporated or organized under the laws of the United States of America.

However:

- Coverage under this provision 3 is afforded only until the next occurring annual anniversary of the beginning of the policy period shown in the Declarations, or the end of the policy period, whichever is earlier; and
- Coverage A does not apply to **bodily injury** or **property damage** that

occurred before you acquired or formed the organization; and

- Coverage B does not apply to **personal and advertising injury** arising out of an offense committed before you acquired or formed the organization.

B. SECTION II - WHO IS AN INSURED, the last paragraph, is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations. However, this does not apply to a limited liability company that meets all of the conditions in Section II - Who Is An Insured, item 3., above.

2. Additional Insured

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an additional insured, then this Section 2. Additional Insured does not apply to such person or organization.

SECTION II - WHO IS AN INSURED, subsection 2.e., is added as follows:

- Any person or organization is included as an additional insured, but only to the extent such person or organization is legally obligated to pay for **bodily injury**, **property damage** or **personal and advertising injury** caused by your acts or omissions. With respect to the insurance afforded to such additional insured, all of the following additional provisions apply:

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the Fireman's Fund Insurance Companies® as named in the policy

Secretary



President



- (1) You have agreed in a written **insured contract** that such person or organization be added as an additional insured under this policy;
- (2) The **bodily injury, property damage or personal and advertising injury** for which said person or organization is legally obligated to pay occurs subsequent to the execution of such **insured contract**;
- (3) The most we will pay is the lesser of either the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or the limits of insurance required by the **insured contract**;
- (4) The insurance afforded to such additional insured only applies to the extent permitted by law;
- (5) Such person or organization is an additional insured only with respect to:
- (a) Their ownership, maintenance, or use of that part of the premises, or land, owned by, rented to, or leased to you, except such person or organization is not an insured with respect to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization;
 - (b) Your ongoing operations performed for that insured;
 - (c) Their financial control of you, except such person or organization is not an insured with respect to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization;
 - (d) The maintenance, operation or use by you of equipment leased to you by such person or organization;
 - (e) Operations performed by you or on your behalf and for which a state or political subdivision has issued a permit, provided such operations are not performed for such state or political subdivision, and are not included within the **products-completed operations hazard**; or
- (f) Their liability as a grantor of a franchise to you.
- (6) This insurance does not apply to **bodily injury, property damage, personal and advertising injury, occurrence or offense**:
- (a) Which takes place at a particular premises after you cease to be a tenant of that premises;
 - (b) Which takes place after all work, including materials, parts or equipment furnished in connection with such work to be performed by or on behalf of the additional insured at the site of the covered operations, has been completed;
 - (c) Which takes place after that portion of your work out of which the injury or damage arises has been put to its intended use by any other person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project; or
 - (d) Which takes place after the expiration of any equipment lease to which (4)(d) above applies;
- (7) With respect to architects, engineers or surveyors, coverage does not apply to **bodily injury, property damage or personal and advertising injury** arising out of the rendering or failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or
 - (b) Supervisory, inspection, architectural, or engineering services.
- These exclusions apply even if the claims against any insured allege negligence or

other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the occurrence which caused the **bodily injury or property damage**, or the offense which caused the **personal or advertising injury** involved the rendering of or the failure to render any professional services by or for you.

3. Additional Insured - Vendors

If an Additional Insured Vendors endorsement is attached to this policy that specifically names a person or organization as an additional insured, then this Section 3. Additional Insured - Vendors does not apply to that person or organization.

Unless the **products-completed operations hazard** is excluded from this policy, SECTION II - WHO IS AN INSURED, item 2.f. is added as follows:

f. Any vendor of yours is included as an additional insured, but only with respect to **bodily injury or property damage** caused by your **products** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(1) The insurance afforded such vendor does not apply to:

- (a) **Bodily injury or property damage** for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed by the vendor in full compliance with the manufacturer's written instructions at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) **Bodily injury or property damage** arising out of the liability of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products or any ingredient, part or container, entering into, accompanying or containing such products;

(3) The most we will pay is the lesser of either the amount of insurance available under the applicable Limits of Insurance shown in the Declarations or the limits of insurance required by the contract or agreement; and

(4) The insurance afforded to such vendor only applies to the extent permitted by law.

4. Additional Insured - Limited Primary and Non-contributory Provision

The following is added as a second paragraph to Section IV Conditions, Condition 4. Other Insurance, following paragraph b.(2):

However, if you have added any person, organization or vendor of yours as an additional insured to

this policy by way of this MultiCover® endorsement and have agreed in a written **insured contract** that this insurance is primary and non-contributory with other insurance available to that additional insured, this insurance is primary and we will not seek contribution from such additional insured's other insurance, provided that the additional insured is a Named Insured under such other insurance.

5. Waiver of Subrogation

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, item 8., is deleted and replaced by the following:

8. Transfer of Rights of Recovery Against Others to Us and Blanket Waiver of Subrogation

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after the loss to impair those rights. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.
- b. If required by a written **insured contract** executed prior to the occurrence or offense, we waive any right of recovery we may have against any person or organization named in such **insured contract**, because of payments we make for injury or damage arising out of your operations or your work for that person or organization.

6. Cancellation - 90 Days

Common Policy Conditions endorsement IL0017, A. Cancellation, item 2.b. is deleted and replaced by the following:

- b. 90 days before the effective date of cancellation if we cancel for any other reason.

7. Liberalization

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, the following is added as an additional Condition:

Liberalization

If we adopt a change in our forms or rules which would broaden the coverage provided by any form that is a part of this policy without an extra premium charge, the broader coverage will apply to this policy. This extension is effective upon the approval of such broader coverage in your state.

8. Fire, Explosion, Sprinkler Leakage, or Lightning Legal Liability Coverage

- A. SECTION I - COVERAGES, COVERAGE: A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, the last paragraph, is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, explosion, sprinkler leakage, or lightning to premises while:

1. Rented to you;
2. Temporarily occupied by you with the permission of the owner; or
3. Managed by you under a written agreement with the owner.

A separate limit of insurance applies to this coverage as described in Section III - LIMITS OF INSURANCE.

- B. SECTION III - LIMITS OF INSURANCE, item 6., is deleted and replaced by the following:

6. Subject to 5. above, the Damage to Premises Rented To You Limit shown in the Declarations, for property damage to any one premises while rented to you, or in the case of damage by fire, explosion, sprinkler leakage, or lightning while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner, is the greater of:

- a. \$1,000,000 Any One Premises; or
- b. The Damage To Premises Rented To You Limit shown in the Declarations.

C. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, b. Excess Insurance, (1)(a), items (i) and (iii), are deleted and replaced by the following:

- (i) That is Fire, Explosion, Sprinkler Leakage, or Lightning insurance for premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner;
- (iii) That is insurance purchased by you to cover your liability as a tenant for property damage to premises rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner; or

D. SECTION V - DEFINITIONS, 9. Insured Contract, item a., is deleted and replaced by the following:

- (a) A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, explosion, sprinkler leakage, or lightning to premises while rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement with the owner, is not an insured contract;

9. Damage to Invitees' Automobiles from Falling Trees or Tree Limbs - Limited Coverage

This coverage applies to direct physical damage to automobiles owned by invitees subject to all of the following:

- 1. Provided such damage originates from trees on premises owned, managed, leased or rented by an insured;
- 2. Coverage applies only to invitees of an insured or an insured's tenant;
- 3. Such damage is directly caused by wind-driven falling trees or tree limbs;
- 4. The most we will pay for any one loss is the lowest of:

- a. the actual cash value of the damaged automobile as of the time of the loss; or
- b. the cost of repairing the damaged automobile; or
- c. the cost of replacing the damaged automobile with another automobile of like kind and quality.

Regardless of the number of occurrences, losses or claims, this coverage is subject to a limit of \$25,000 in any one policy period;

- 5. This coverage is not subject to the General Liability General Aggregate Limit; and
- 6. We will make payments under this coverage without regard to fault.

10. Non-Owned or Chartered Watercraft

SECTION 1 - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, item g. Aircraft, Auto, or Watercraft, item (2), is deleted and replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used for public transportation or as a common carrier;

11. Chartered Aircraft

SECTION 1 - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, g. Aircraft, Auto Or Watercraft, item (6), is added as follows:

- (6) An aircraft in which you have no ownership interest and that you have chartered with crew.

12. Coverage Territory - Broadened

SECTION V - DEFINITIONS, item 4.a., is deleted and replaced by the following:

- a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, The Cayman Islands, and the British Virgin Islands;

13. Personal and Advertising Injury - Contractual

Unless personal and advertising injury is excluded from this policy the following applies:

SECTION I - COVERAGES, COVERAGE B, 2. Exclusions, item e., is deleted.

14. Fellow Employee Coverage

SECTION II - WHO IS AN INSURED, 2.a., item (1) is deleted and replaced by the following:

(1) Personal and advertising injury:

However, subsections (a), (b), (c) and (d) of item (1) remain unchanged.

15. Bodily Injury Definition - Broadened

SECTION V - DEFINITIONS, 3. Bodily Injury is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

16. Expected or Intended Injury - Amendment to Exclusion

SECTION I. Coverage A Bodily Injury and Property Damage Liability, 2. EXCLUSIONS, a. Expected or Intended Injury, is deleted and replaced by the following:

a. Expected or Intended Injury

Bodily injury or property damage expected or intended from the standpoint of the insured.

This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

17. Unintentional Failure to Disclose Hazards

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, item 6. Representations, the following is added:

- d. If you unintentionally fail to disclose any hazards existing at the inception date of this policy, we will not deny coverage under this Coverage I form because of such failure.

However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

18. Supplementary Payments - Increased Limits

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B, items 1.b. and 1.d., are deleted and replaced by the following:

- b. The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit, including substantiated loss of earnings up to \$500 a day because of time off from work.

19. Duties in the Event of an Occurrence, Offense, Claim or Suit - Amended

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, item 2.a. is deleted and replaced by the following:

- (1) You must see to it that we or any licensed agent of ours are notified of a General Liability occurrence or offense which may result in a claim as soon as practicable after it becomes known to:

- (a) You, if you are an individual;
- (b) Your partner or member, if you are a partnership or joint venture;
- (c) Your member, if you are a limited liability company;
- (d) Your executive officer if you are an organization other than a partnership, joint venture or limited liability company; or
- (e) Your authorized representative or insurance manager.

Knowledge of an occurrence or offense by persons other than those listed above does not imply that those listed above also have such knowledge.

(2) To the extent possible, notice should include:

- (a) How, when and where the occurrence or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the occurrence or offense.

20. Non Employment Discrimination Liability

Unless personal and advertising injury is excluded from this policy the following applies:

A. SECTION V - DEFINITIONS, 14. Personal and advertising injury, item h. is added as follows:

h. **Discrimination.**

B. SECTION V - DEFINITIONS, item 23. is added as follows:

23. **Discrimination** means the unlawful treatment of a person or class of persons because of their specific race, color, religion, gender, age, or national origin in comparison to one or more persons who are not members of the specified class.

C. SECTION I - COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, the following are added:

- q. **Discrimination** directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured;
- r. **Discrimination** directly or indirectly related to the sale, rental, lease or sublease

or prospective sale, rental, lease or sublease of any dwelling or permanent lodging by or at the direction of any insured;

- s. **Discrimination**, if insurance thereof is prohibited by law; or
- t. Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, governmental code, law, or statute because of discrimination.

21. Medical Payments

Unless COVERAGE C MEDICAL PAYMENTS, or the products-completed operations hazard has been excluded from this policy the following applies:

A. SECTION I - COVERAGES, COVERAGE C MEDICAL PAYMENTS, 2. Exclusions, item f., is deleted and replaced by the following:

f. **Products-Completed Operations Hazard**

Included within the products-completed operations hazard. However, this exclusion does not apply to expenses for dental services.

B. Section I - COVERAGES, COVERAGE C MEDICAL PAYMENTS, is amended to include item 3. as follows:

3. **Limit of Insurance**

The Medical Expense Limit of Insurance shall be the greater of:

- a. \$20,000 Any One Person; or
- b. The amount shown in the Declarations.

All other terms and conditions of the policy apply.

Policy Number: MZX80988373 Effective Date: 06/30/2018

FleetCover® Endorsement - CA 70 18 10 14

Policy Amendment(s)

This endorsement modifies insurance provided under the following:

Business Auto Coverage Form

Motor Carrier Coverage Form

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Broadened Named Insured

Section II - Covered Autos Liability Coverage, A. Coverage, 1. Who Is An Insured, the following is added:

Any organization you own on the inception of this policy, or newly acquire or form during the policy period, and over which you maintain during the policy period, majority ownership or majority interest will qualify as a Named Insured if:

- (1) There is no other similar insurance available to that organization; and
- (2) The first Named Insured shown in the Declarations of this policy has the responsibility of placing insurance for that organization; and
- (3) The organization is incorporated or organized under the laws of the United States of America.

However:

- (a) Coverage under this provision is afforded only until the next occurring 12 month anniversary of the beginning of the policy period shown in the Declarations, or the end of the policy period, whichever is earlier; and
- (b) Coverage under this provision does not apply to bodily injury or property damage that results from an accident that occurred before you acquired or formed the organization; and
- (c) No person or organization is an insured with respect to any current or past partnership, or joint venture that is not shown as a Named Insured in the Declarations; and
- (d) Coverage under A.(1), (2) and (3) above does not apply to any organization that is covered as an insured under any other automobile liability insurance policy whose limits of insurance have been exhausted or whose insurer has become insolvent.

B. Broadened Who Is an Insured

1. Form CA0001 (if attached to this policy), **Section II - Covered Autos Liability Coverage, A. Coverage, 1. Who Is An Insured**, item b.(2) is deleted, and d. is added as follows:

- d. Your employee while using with your permission his owned auto, or an auto owned by a member of his or her household, in your business or your personal affairs, provided you do not own, hire or borrow that auto.

This Form must be attached to Change Endorsement when issued after the policy is written.
One of the Fireman's Fund Insurance Companies as named in the policy

2. Form CA0020 (if attached to this policy), **Section II - Covered Autos Liability Coverage, A. Coverage, 1. Who Is An Insured**, item b.(2) is deleted, and f. is added as follows:

- f. Your employee or agent while using with your permission his owned private passenger type auto, or a private passenger type auto owned by a member of his or her household, in your business or your personal affairs, provided you do not own, hire or borrow that auto.

C. Additional Insured Coverage and Waiver of Subrogation

1. Form CA0001 (if attached to this policy), **Section II - Covered Autos Liability Coverage, A. Coverage, 1. Who Is An Insured**, the following is added as item e.; and form CA0020 (if attached to this policy), **Section II - Covered Autos Liability Coverage, A. Coverage, 1. Who Is An Insured**; the following is added as item g.:

Any person or organization with respect to the operation, maintenance, or use, of a covered auto, provided that you and such person or organization have agreed under an expressed provision in a written insured contract or written agreement, or a written permit issued to you by a governmental or public authority, to add such person, organization, or governmental or public authority to this policy as an insured.

However, such person or organization is an insured:

- (1) Only with respect to the operation, maintenance, or use, of a covered auto; and
 - (2) Only for bodily injury or property damage caused by an accident which takes place after:
 - (a) You executed the insured contract or written agreement; or
 - (b) The permit has been issued to you.
2. Form CA0001 (if attached to this policy), **Section IV - Business Auto Conditions, A. Loss Conditions**, item 5.; and form CA0020 (if attached to this policy), **Section V - Motor Carrier Conditions, A. Loss Conditions**, item 6.; the following is added:

Waiver of Subrogation

If required by a:

- a. Written insured contract or written agreement executed prior to the accident; or
- b. Written permit issued to you by a governmental or public authority prior to the accident;

we waive any right of recovery we may have against any person or organization named in such contract, agreement or permit, because of payments we make for injury or damage arising out of a covered auto.

D. Auto Medical Payments - Increased Limit

For each covered auto described in the Declarations or shown in the Schedule as having Auto Medical Payments Coverage, the Medical Payments Limit of Insurance for those autos is revised to the greater of:

1. \$5,000; or
2. The limit shown in the Declarations.

E. Hired Auto Physical Damage Coverage and Loss of Use Expenses

Hired Auto Physical Damage Coverage

If Physical Damage Coverage is provided by this policy on your owned covered autos, the following applies:

Any auto that you lease, hire, rent or borrow without a driver, will be covered under this policy for Physical Damage Coverage. However, any such auto:

1. Will be covered only for the same Physical Damage Coverage that applies to your owned covered autos;
2. Will be subject to the same applicable deductible shown in the Declarations that applies to your most similar owned covered auto, except any Comprehensive Coverage deductible does not apply to loss caused by fire or lightning; and
3. The most we will pay for any one loss in any one accident is the lesser of the following:
 - a. Actual Cash Value of the damaged or stolen property as of the time of the loss as determined by us; or
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

In addition, we will pay costs and fees associated with such covered loss only for a maximum time period of seven days beginning with the date of loss, subject to a maximum of \$500.

However:

- (1) If form CA0001 is attached to this policy, this coverage does not apply to autos you lease, hire, rent or borrow from any of your employees, partners (if you are a partnership), members (if you are a limited liability company) or members of their households; and
- (2) If form CA0020 is attached to this policy, this coverage does not apply to any private passenger type auto you lease, hire, rent or borrow from any member of your household, any of your employees, partners (if you are a partnership), members (if you are a limited liability company), or agents or members of their households.

Hired Auto Loss of Use Expenses

Form CA0001 (if attached to this policy), Section III - Physical Damage Coverage, A. Coverage, 4. Coverage Extension, b. Loss of Use Expenses; and form CA0020 (if attached to this policy), Section IV - Physical Damage Coverage, A. Coverage, 4. Coverage Extension, b. Loss of Use Expenses; is deleted and replaced by the following:

- b. For Hired Auto Physical Damage, we will pay expenses for which an Insured becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:
 - (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered auto;
 - (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss is provided for any covered auto; or
 - (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered auto.

However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$1,000.

F. Coverage Territory - Hired Auto

1. Form CA0001, (if attached to this policy), Section IV - Business Auto Conditions, B. General Conditions, 7. Policy Period, Coverage Territory, b.(5) is deleted and replaced by the following:

- (5) Anywhere in the world if a covered auto of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 180 days or less,
2. Form CA0020 (if attached to this policy), **Section V - Motor Carrier Conditions, B. General Conditions, 7. Policy Period, Coverage Territory, b.(5)** is deleted and replaced by the following:

- (5) Anywhere in the world if a covered auto of the **private passenger type** is leased, hired, rented or borrowed without a driver for a period of 180 days or less,

G. Communication Equipment Coverage

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage, C. Limits of Insurance, Paragraph 1.b.**; and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage, C. Limits of Insurance, Paragraph 1.b.**; is deleted and replaced by the following:

- b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one loss is \$1,500, if, at the time of loss, such electronic equipment is:

H. Tapes, Records, CDs and DVD Coverage

The Physical Damage Coverage Section is amended as follows:

1. The exclusion referring to tapes, records, discs, or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment does not apply.
2. Under Comprehensive Coverage - Form CA0001 (if attached to this policy), **Section III- Physical Damage Coverage, A. Coverage**; and form CA0020 (if attached to this policy), **Section IV- Physical Damage Coverage, A. Coverage**; the following is added:

We will pay for loss to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- a. Are your property, or that of a family member; and
- b. Are in a covered auto at the time of a loss.

The most we will pay for loss is \$250. No deductible applies to this coverage.

I. Personal Effects Coverage

Form CA0001 (if attached to this policy), **Section III - Physical Damage Coverage, A. Coverage, 4. Coverage Extensions**; and form CA0020 (if attached to this policy), **Section IV - Physical Damage Coverage, A. Coverage, 4. Coverage Extension**; item c. is added as follows:

c. Personal Effects Coverage

We will pay up to \$500 for loss for clothing items or other personal effects that are owned by an insured and are in a covered auto in the event of a covered loss.

Personal Effects do not include audio visual or electronic devices, money, giftcards, securities, jewelry, or tools.

This coverage is excess over any other collectible insurance.

No deductible applies to this coverage.

J. Airbag Coverage

Form CA0001 (if attached to this policy), Section III - Physical Damage Coverage, B. Exclusions, 3.a.; and form CA0020 (if attached to this policy), Section IV - Physical Damage Coverage, B. Exclusions, 3.a.; the following is added:

However, mechanical breakdown does not mean the unintended discharge of an airbag, provided that any loss covered under this provision is excess over any other collectable insurance or warranty designed to cover such unintended discharge.

K. Rental Reimbursement

Form CA0001 (if attached to this policy), Section III - Physical Damage Coverage, A. Coverage, 4. Coverage Extensions; and form CA0020 (if attached to this policy), Section IV - Physical Damage Coverage, A. Coverage, 4. Coverage Extension; item d. is added as follows:

d. Rental Reimbursement or Transportation Expenses

If loss occurs to a covered auto described or designated in the Declarations or Schedule and covered for Physical Damage Coverage, we will pay for rental expenses for the rental of a similar replacement auto and additional transportation expenses, incurred by you. This payment applies in addition to the otherwise applicable amount of each coverage you have on the covered auto. No deductible applies to this coverage.

However:

- (1) We will pay only for those expenses incurred by you that begin 24 hours after the covered loss.
- (2) We will cease paying for those expenses, regardless of the policy's expiration date, at the earlier of the following dates:
 - (a) The number of days reasonably required to repair or replace the covered auto. If loss is caused by theft, this number of days is added to the number of days it takes to locate and return the covered auto to you; or
 - (b) 45 days from the date this coverage begins.
- (3) Our payment is limited to the lesser of the following amounts:
 - (a) Necessary and actual expenses incurred by you; or
 - (b) \$1,500.
- (4) This coverage does not apply while there are spare or reserve autos available to you for your operations.
- (5) If loss results from the total theft of a covered private passenger type auto (if CA0020 is attached to this policy), or a covered private passenger auto (if CA0001 is attached to this policy), we will pay under this coverage only that amount of your covered rental expenses or additional transportation expenses which are not already provided for under the Physical Damage Coverage Extensions.

L. Extended Towing Coverage

1. Form CA0001 (if attached to this policy), Section III - Physical Damage Coverage, A. Coverage, 2. Towing, is deleted and replaced by the following:

2. Extended Towing

We will pay up to \$750 per disablement for towing and labor costs you incur each time your covered auto is disabled. However:

- All labor must be performed at the place of disablement; and
- If the covered auto is of the private passenger type, no deductible applies; and
- If the covered auto is not of the private passenger type, our obligation to pay will be reduced by a \$250 deductible per disablement.
- If the covered auto is not of the private passenger type and the disablement results from a loss covered under Section III - Physical Damage Coverage, A. Coverage, Paragraphs 1, a., b., or c., there is no separate deductible for the Extended Towing Coverage.

For purposes of this coverage, disablement means a breakdown of the covered auto including mechanical breakdown, engine failure, or tire blowout, where repairs cannot be made roadside and a tow is required to remove the auto from the roadway and to seek additional services and repair.

2. Form CA0020 (if attached to this policy), Section IV - Physical Damage Coverage, A. Coverage, 2. Towing - Private Passenger Autos, is deleted and replaced by the following:

2. Extended Towing

We will pay up to \$750 per disablement for towing and labor costs you incur each time your covered auto is disabled. However:

- All labor must be performed at the place of disablement; and
- If the covered auto is of the private passenger type, no deductible applies; and
- If the covered auto is not of the private passenger type, our obligation to pay will be reduced by a \$250 deductible per disablement.
- If the covered auto is not of the private passenger type and the disablement results from a loss covered under Section IV - Physical Damage Coverage, A. Coverage, Paragraphs 1, a., b., or c., there is no separate deductible for the Extended Towing Coverage.

For purposes of this coverage, disablement means a breakdown of the covered auto including mechanical breakdown, engine failure, or tire blowout, where repairs cannot be made roadside and a tow is required to remove the auto from the roadway and to seek additional services and repair.

M. Cancellation - 120 Days Notice

If we cancel this policy for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured at the last mailing address known to us, written notice of cancellation at least 120 days prior to the effective date of cancellation.

N. Supplementary Payments - Increased Limits

Section II - Covered Autos Liability Coverage, 2. Coverage Extensions, a. Supplementary Payments, items (2) and (4) are deleted and replaced by the following:

- (2) Up to \$2,500 for the cost of bail bonds (including bonds for related traffic law violations) required because of an accident we cover. We do not have to furnish these bonds.

- (4) All reasonable expenses incurred by the insured at our request, including substantiated loss of earnings up to \$500 a day, because of time off from work.

O. Duties In The Event Of Accident, Claim, Suit Or Loss - Amended

Form CA0001 (if attached to this policy) Section IV - Business Auto Conditions, A. Loss Conditions, item 2. a.; and form CA0020 (if attached to this policy) Section V - Motor Carrier Conditions, A. Loss Conditions, item 2. a.; is deleted and replaced by the following:

- a. In the event of accident, claim, suit or loss, you must promptly notify us or our authorized representative when it becomes known to:

- (1) You, if you are an individual;
- (2) Your partner or member, if you are a partnership or joint venture;
- (3) Your member, if you are a limited liability company;
- (4) Your executive officer if you are an organization other than a partnership, joint venture or limited liability company; or
- (5) Your authorized representative or insurance manager.

Knowledge of an accident, claim, suit or loss by other persons does not imply that the persons listed above have such knowledge.

Notice should include:

- (a) How, when and where the accident or loss occurred; and
- (b) The insured's name and address; and
- (c) To the extent possible, the names and address of any injured persons and witnesses.

P. Unintentional Failure to Disclose Hazards

Form CA0001 (if attached to this policy), Section IV - Business Auto Conditions, B. General Conditions, item 2.; and form CA0020 (if attached to this policy), Section V - Motor Carrier Conditions, B. General Conditions, item 2.; the following is added:

However, if you unintentionally fail to disclose any hazards existing at the inception date of this policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

Q. Fellow Employee Coverage

Section II - Covered Autos Liability Coverage, B. Exclusions, 5. Fellow Employee, the following is added:

However, this exclusion does not apply if the bodily injury results from the use of a covered auto you own or hire, and provided that any coverage under this provision only applies in excess over any other collectible insurance.

R. Limited Mexico Coverage

WARNING

AUTO ACCIDENTS IN MEXICO ARE SUBJECT TO THE LAWS OF MEXICO ONLY - NOT THE LAWS OF THE UNITED STATES OF AMERICA. THE REPUBLIC OF MEXICO CONSIDERS ANY AUTO ACCIDENT A CRIMINAL OFFENSE AS WELL AS A CIVIL MATTER.

IN SOME CASES THE COVERAGE PROVIDED HERE MAY NOT BE RECOGNIZED BY THE MEXICAN AUTHORITIES AND WE MAY NOT BE ALLOWED TO IMPLEMENT THIS COVERAGE AT ALL IN MEXICO. YOU SHOULD CONSIDER PURCHASING AUTO COVERAGE FROM A LICENSED MEXICAN INSURANCE COMPANY BEFORE DRIVING IN MEXICO.

THIS ENDORSEMENT DOES NOT APPLY TO ACCIDENTS OR LOSSES WHICH OCCUR OUTSIDE OF 25 MILES FROM THE BORDER OF THE UNITED STATES OF AMERICA.

Form CA0001 (if attached to this policy), Section IV - Business Auto Conditions, B. General Conditions, item 7.; and form CA0020 (if attached to this policy), Section V - Motor Carrier Conditions, B. General Conditions, item 7.; the following is added:

The coverage territory is extended to include Mexico, but only:

- (i) For accidents or losses occurring within 25 miles of the United States border; and
- (ii) For trips into Mexico of 10 days or less; and
- (iii) If the covered auto is principally garaged and principally used in the United States; and
- (iv) If the insured is a resident of the United States.

If a loss to a covered auto occurs in Mexico, we pay for such loss in the United States. If the covered auto must be repaired in Mexico in order to be driven, we will not pay for more than the actual cash value of such loss as determined by us at the nearest United States point where the repairs can be made.

Any insurance provided under this provision will be excess over any other collectible insurance.

S. Extended Glass Coverage

Form CA0001 (if attached to this policy), Section III - Physical Damage Coverage, A. Coverage, item 3.a.; and form CA0020 (if attached to this policy), Section IV - Physical Damage Coverage, A. Coverage, item 3.a.; is deleted and replaced by the following:

- a. Glass breakage. If glass must be replaced, the deductible will be \$100 or the deductible shown in the Declarations, whichever is less. If glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

T. Broadened Definition of Bodily Injury

Form CA0001 (if attached to this policy), Section V - Definitions, item C.; and form CA0020 (if attached to this policy), Section VI - Definitions, item C.; is replaced by the following:

- C. Bodily injury means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

U. Customer Lease or Loan Physical Damage Coverage Extension

Form CA0001 (if attached to this policy), Section III - Physical Damage Coverage, C. Limits of Insurance; and form CA0020 (if attached to this policy), Section IV - Physical Damage Coverage, C. Limits of Insurance; item 4. is added as follows:

- 4. If your covered owned auto is:
 - (1) Shown in the Schedule and designated as covered for Physical Damage Coverage; and
 - (2) Shown in this policy as having a loss payee or additional insured-lessor; and



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

APPROVE THIRD AMENDMENT TO AGREEMENT WITH DAVID J. POWERS & ASSOCIATES TO REVIEW AND PROVIDE COMMENTS ON THE HIGH SPEED RAIL PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the Third Amendment to Agreement with David J. Powers & Associates for technical support services related to environmental review of the High Speed Rail project, extending the Term of Agreement until December 31, 2020.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving Our Community History
Advancing Regional Initiatives

2019 Strategic Priorities

High Speed Rail

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element
Station Area Master Plan

REPORT NARRATIVE:

On June 1, 2016, the City Council approved a contract for \$64,810 with David J. Powers & Associates (DJP&A) for technical support services related to environmental review of the High Speed Rail (HSR) project. On October 19, 2016, the City Council approved the First Amendment to the contract increasing the contract amount to \$107,660. A Second Amendment was executed on December 20, 2018 to extend the Term of the agreement by one year to December 31, 2019. Therefore, the current Agreement is set to expire on December 31, 2019.

The High Speed Rail (HSR) project is a State of California transportation system that will connect the San Francisco Bay Area to Los Angeles (eventually from Sacramento to San Diego) with a train system that will run at speeds of over 200 miles per hour. The California HSR Authority is working to environmentally clear the section between San Jose and the Central Valley Wye. Options range from a new dedicated high-speed rail corridor between San Jose and Gilroy to a shared corridor with electrified Caltrain service using the existing rail corridor. Environmental clearance is scheduled to be completed in 2020. Community engagement activities will continue throughout the process in communities along the corridor.

DJP&A's scope was to provide technical support associated with the analysis of the San Jose to Merced Project Section review that will be included within the Draft Environmental Impact Report/Draft Environmental Impact Statement. Technical support includes review of preliminary engineering documents and to help assess potential impacts of the various alternatives being considered through Morgan Hill. This work is anticipated to be reimbursed by HSR as part of the HSR Reimbursement agreement approved by Council on June 1, 2016.

DJP&A has been working on analysis that articulates the impact of the various alignments and quantifies the number of residential properties and commercial businesses impacted. Furthermore, Hexagon Transportation Consultants, a sub-consultant to DJP&A created a Transportation and Construction Analysis that articulates the potential impacts to the street network and suggests mitigations for the various alternatives.

It is vital to extend this Agreement until December 31, 2020 as the HSR Draft Environmental Impact Report/Draft Environmental Impact Statement for the section between San Jose and the Central Valley Wye is expected to be released in 2020; however, due to previous delays from HSR, staff proposes to authorize the City Manager to extend up to two one-year extensions on this Agreement with DJP&A.

COMMUNITY ENGAGEMENT: Collaborate

Many meetings have taken place over the last couple of years, including internal and regional technical meetings and regional Working Group meetings with community representatives from the communities of Morgan Hill, San Martin, and Gilroy. A City Council Study Session took place on September 21, 2016 in which the lead project engineer presented the various alternatives over an aerial. A business meeting was held on September 20, 2016 in collaboration with the Downtown Association and the Chamber of Commerce and a Community meeting was held on September 27, 2016; as well as a Morgan Hill-Gilroy Community Working Group meeting on November 7, 2018, March 5, 2019, April 22, 2019 and July 10, 2019 and a July 17, 2019 Workshop in the Morgan Hill City Council Chambers. High Speed Rail staff attended all of these meetings and presented information on the preferred alternative.

ALTERNATIVE ACTIONS:

The Council may choose not to approve the Third Contract Amendment with David J. Powers and Associates and let the contract expire.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 1, 2016, the City Council received a presentation by High Speed Rail regarding the status of its project. At that meeting, the City Council approved a reimbursement agreement with the California High Speed Rail Authority (CHSRA) and approved consultant agreements with Apex Strategies and David J. Powers and Associates. The Council also adopted a resolution reaffirming the City of Morgan Hill's position that Highway 101 is the preferred alignment for High Speed Rail through Morgan Hill. A similar resolution was approved in 2009 and 2010.

FISCAL AND RESOURCE IMPACT:

The Reimbursement Agreement with California HSR Authority provides for reimbursement to the City for staff and consultant work. While these costs are appropriated from the General Fund, staff anticipates full reimbursement by HSR.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Third Amendment to Agreement with David J. Powers & Associates

THIRD AMENDMENT TO AGREEMENT DAVID J. POWERS & ASSOCIATES

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and DAVID J. POWERS & ASSOCIATES, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on December 18, 2019.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 17, 2016, for consultant services for a maximum compensation of SIXTY-FOUR THOUSAND EIGHT HUNDRED TEN AND NO/100 DOLLARS (\$64,810.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of October 27, 2016, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED SEVEN THOUSAND SIX HUNDRED SIXTY AND NO/100 DOLLARS (\$107,660.00).
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 20, 2018, under which the Term of Agreement under the CONSULTANT AGREEMENT, as amended, was extended to December 31, 2019. The CONSULTANT AGREEMENT, and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 17, 2016, until December 31, 2020. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years, consisting of two one-year extensions. Any such extension shall be in writing and signed by both parties to this Agreement."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

DAVID J. POWERS & ASSOCIATES

City Attorney

Date: _____

By:

Date: _____

Afani Davidson, President

December 9, 2019

Julio Wuytt, Secretary

By:

Date: _____

Dec. 9, 2019

EXHIBIT 1 TO THIRD AMENDMENT

SECOND AMENDMENT TO AGREEMENT
DAVID J. POWERS & ASSOCIATES

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/20/18 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and DAVID J. POWERS & ASSOCIATES, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on October 19, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 17, 2016, for consultant services for a maximum compensation of SIXTY-FOUR THOUSAND EIGHT HUNDRED TEN AND NO/100 DOLLARS (\$64,810.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of October 27, 2016, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to ONE HUNDRED SEVEN THOUSAND SIX HUNDRED SIXTY AND NO/100 DOLLARS (\$107,660.00). The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from June 17, 2016, until December 31, 2019."

B. Paragraph 5 shall be amended and replaced in its entirety by the following:

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

C. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

"7.2.2. **Workers Compensation.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not

Attachment: Third Amendment to Agreement with David J. Powers & Associates (2590 : HSR Third Amendment to Agreement)

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."

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

"9. Compliance with Law.

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

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

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

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

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

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

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

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

City Clerk

Date:

APPROVED AS TO FORM:

City Attorney

Date:

CITY OF MORGAN HILL

City Manager

Date:

DAVID J. POWERS & ASSOCIATES

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

By:

Title:

Print Name and Title of Signer.

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

Date:

EXHIBIT "1"

12604-16-060

FIRST AMENDMENT TO AGREEMENT
DAVID J. POWERS & ASSOCIATES

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on October 27, 2016 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, DAVID J. POWERS & ASSOCIATES, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This FIRST Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on October 19, 2016.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of June 17, 2016, for consultant services for a maximum compensation of \$64,810 ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as "Exhibit A to First Amendment" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in "Exhibit B to First Amendment":

Review and provide comments on technical/preliminary engineering documents, review and provide comments on the Preliminary EIR/EIS Sections, and increase management and review of sub-consultant work."

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

"4.1. **Amount.** (\$107,660) Total compensation under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Seven Thousand Six Hundred Sixty Dollars and shall be billed based on the rate and basis set forth in "Exhibit B" and "Exhibit B to First Amendment". If the City Manager extends the term of this Agreement for up to one year pursuant to the provision of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

City Clerk
 Date: _____

APPROVED AS TO FORM:

for W. J. Powers
 City Attorney
 Date: 10/27/16

Resolution No. 16-167

CITY OF MORGAN HILL

SJA
 City Manager
 Date: 10/27/16

DAVID J. POWERS & ASSOCIATES

By: Judy W. Shorley
 Title: President

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

Date: 10/19/16

By: John M. Hesler
 Title: SECRETARY

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

Date: 10-18-2016

12604-16-060

EXHIBIT A TO FIRST AMENDMENT

CONSULTANT AGREEMENT
DAVID J. POWERS & ASSOCIATES

THIS AGREEMENT is entered into and becomes effective on 6/17/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and DAVID J. POWERS & ASSOCIATES a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on June 1, 2016.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be review of High-Speed Rail San Jose-Merced EIR/EIS Project Documents as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$64,810.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Sixty Four Thousand Eight Hundred Ten dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor; the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the City's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. **General Liability:**

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

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

7.2.1.3. Insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17675 Peak Avenue
Morgan Hill, CA 95037

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

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

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

Address of CONSULTANT is as follows:

David J. Powers & Associates
1871 The Alameda, Suite 200
San Jose, CA 95126

Address of CITY is as follows:

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

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

15. **Maintenance of Records.**

- 15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.
- 15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

17. Time of Essence. Time is of the essence in the performance of this Agreement.

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

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

20. Defense and Indemnification.

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

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

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

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

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the Interpretations under California Civil Code Section 2778. It is expressly

understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

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

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

23. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1664, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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

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

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

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

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

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

ATTEST:

[Signature]
 City Clerk/Deputy City Clerk

for Michelle Wilson
 Print Name

Date: 6/27/16

APPROVED AS TO FORM:

[Signature]
 Interim City Attorney

for Gary M. Baum
 Print Name

Date: 06/17/16

CITY OF MORGAN HILL

[Signature]
 City Manager

Steve Rymer
 Print Name

Date: 6/17/16

DAVID J. POWERS & ASSOCIATES

By: [Signature]

Title: Akoni Davidson, Vice President
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: May 25, 2016

By: [Signature]

Title: JOHN M. HESLER, SECRETARY
 Print Name and Title of Signer.

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

Date: May 25, 2016

**EXHIBIT A
SCOPE OF SERVICES**

DJP&A will provide the following services associated with the High Speed Rail project segment from San Jose to Merced:

- 1. Review and provide comments on the Technical/Preliminary Engineering Documents**
- 2. Review and provide comments to the preliminary EIR/EIS sections**
- 3. Manage and review sub-consultant work**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

DJP&A Costs to Review Documents and Provide Comments In-House Hours (120 hours)
80 hours * \$205/hr, 40 hours * \$135/hr

Subconsultants

Illingworth & Rodkin, Inc. (60 hours * \$185/hr) Hexagon (40 hours * \$265/hr)
Holman and Associates (20 hours * \$150/hr) Cornerstone (12 hours * \$225/hr)
WRA (24 hours * \$187.5/hr)
Schaaf and Wheeler (24 hours * \$229/hr)

The total project estimate is \$64,810

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

It is expected that DJP&A will perform work as directed by City of Morgan Hill and provide feedback as requested pending the different technical documents as the complexity of the documents and corresponding review time is not known at this time.

EXHIBIT B TO FIRST AMENDMENT



October 6, 2016

Ms. Tiffany Brown
Associate Planner
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Tiffany.brown@morganhill.ca.gov

RE: Budget Amendment Request for Completion of Tasks 1 and 3 for California High Speed Rail Project

Dear Tiffany:

There are three tasks assigned to David J. Powers & Associates (DJP&A) that include review and providing comments on technical/preliminary engineering documents, review and providing comments on the preliminary EIR/EIS sections and managing and reviewing sub consultant work. Completing Task 1 required unanticipated work from David J. Powers & Associates (DJP&A) and Hexagon Transportation Consultants. The additional work required to complete Tasks 1, 2 and 3 are described below.

Additional Work Required

Task 1: Review and Provide comments on technical/preliminary engineering documents

At the City's request, DJP&A attended three HSR Technical Review Meetings and one Technical Working Group meeting. Attendance at the meetings and associated travel time and expenses was not included as part of the original scope and budget. The City reviewed the information provided by High Speed Rail (HSR) Authority and requested that DJP&A conduct an analysis for the different HSR alignments for the City of Morgan Hill. The work required including a graphics person to create maps showing the results of the analysis. Hexagon Transportation Consultants, a sub to DJP&A was also requested to analyze traffic impacts and prepare a memo for the different alignments. Hexagon, like DJP&A had only budgeted previously for review of Draft EIR sections therefore, this unanticipated work exceeded the previously approved scope and budget. Therefore, additional budget is needed to cover the exceedance for the work completed so far and the remaining tasks which include:

- Providing assistance to draft the scoping letter for HSR
- Attendance at a city council meetings for Scoping Letter

1871 The Alameda • Suite 200 • San José, CA 95126 • Tel: 408-248-3500 • Fax: 408-248-9641
www.davidjpowers.com

Attachment: Third Amendment to Agreement with David J. Powers & Associates (2590 : HSR Third Amendment to Agreement)

Task 3: Manage and Review Subconsultant Work

The overall budget has exceeded the previously approved amount, therefore additional budget will be needed to fulfill this task.

Cost Estimate to Complete Additional Work

The total estimated cost of completing the additional work described above and the current and proposed budgets are summarized below. The revised budget also includes hours for a graphic person for DJPA.

	Current Budget	Additional Request	Amended Total
DJP&A in-house staff time:			
Environmental Consulting and Completion of Task 1 and 3 <i>30 hours * \$205/hr, 64 hours * \$135/hr, 10 hours * \$77/hour</i>	\$ 21,800	\$ 15,560	\$ 37,360
Expenses	\$ 0	\$ 150	\$ 150
DJP&A Total:	\$ 21,800	\$ 15,710	\$ 37,510
Subconsultants*:			
Hexagon Transportation Consultants (Traffic) <i>34 hours * \$265/hour, 72 hours * \$170/hour, 22 hours * \$105/hour, \$40 Expenses</i>	\$ 12,190	\$27,140	39,330
Illingworth & Rodkin, Inc.	\$ 12,765	--	\$ 12,765
Holman & Associates	\$ 3,450	--	\$ 3,450
Cornerstone	\$ 3,105	--	\$ 3,105
WRA	\$5,175	--	\$5,175
Schaaf & Wheeler	\$6,325	--	\$6,325
Subconsultant Total:	\$ 43,010	\$ 27,140	\$ 70,150
TOTAL	\$ 64,810	\$ 42,850	\$ 107,660

Note: * Subconsultants expenses are cost plus 15%.

The total cost of completing the additional work described above is \$42,850 which would increase the overall budget from \$64,810 to \$107,660.

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APPROVED

By Shadia Hrichi at 10:06 am, Dec 10, 2018

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/08/2018

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

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

PRODUCER SelectSolutions Insurance Services 1107 Investment Blvd Suite 100 El Dorado Hills CA 95762		CONTACT NAME: Cora Lim PHONE (A/C, No, Ext): (866) 500-6359 FAX (A/C, No): (925) 951-0077 E-MAIL ADDRESS: coral@selectsolutionsins.com															
INSURED David J. Powers & Associates, Inc. 1871 The Alameda, Suite 200 San Jose CA 95126		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Property Casualty Company of America</td> <td>25674</td> </tr> <tr> <td>INSURER B: The Travelers Indemnity Company of Connecticut</td> <td>25682</td> </tr> <tr> <td>INSURER C: The Hanover American Insurance Company</td> <td>36064</td> </tr> <tr> <td>INSURER D: Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: Travelers Property Casualty Company of America	25674	INSURER B: The Travelers Indemnity Company of Connecticut	25682	INSURER C: The Hanover American Insurance Company	36064	INSURER D: Continental Casualty Company	20443	INSURER E:		INSURER F:	
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INSURER D: Continental Casualty Company	20443																
INSURER E:																	
INSURER F:																	

COVERAGES

CERTIFICATE NUMBER: CL1811736114

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	6805H0002841847	12/03/2018	12/03/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			BA6820L15318GRP	12/03/2018	12/03/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			CUP2C5902111847	12/03/2018	12/03/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WZ39816300	01/13/2018	01/13/2019	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	PROFESSIONAL LIABILITY			EEH288347490	03/26/2018	03/26/2019	PER CLAIM \$2,000,000 AGGREGATE \$2,000,000

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

Re: DJP&A Job #16-098 - High Speed Rail. City of Morgan Hill #126-04-16-060.

As Per Contract or Agreement on File with the Insured.

City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insured on General Liability policy if required by written contract per attached endorsement. Waiver of subrogation applies to General Liability and Workers Compensation policies if required by written contract per the attached endorsements.

CERTIFICATE HOLDER

CANCELLATION

City of Morgan Hill Attn: Risk Management 17575 Peak Ave. Morgan Hill CA 95037	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% % of the California workers' compensation premium otherwise due on such remuneration.

Schedule	
Person or Organization	Job Description
WHERE REQUIRED PER WRITTEN	CONTRACT

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No. WZ3-9816300-05

Endorsement No.
Premium \$

Insurance Company THE HANOVER AMERICAN INSURANCE COMPANY

Countersigned By _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BLANKET ADDITIONAL INSURED B. EMPLOYEE HIRED AUTO C. EMPLOYEES AS INSURED D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS E. TRAILERS – INCREASED LOAD CAPACITY F. HIRED AUTO PHYSICAL DAMAGE G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT | <ul style="list-style-type: none"> H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT I. WAIVER OF DEDUCTIBLE – GLASS J. PERSONAL PROPERTY K. AIRBAGS L. AUTO LOAN LEASE GAP M. BLANKET WAIVER OF SUBROGATION |
|---|---|

A. BLANKET ADDITIONAL INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while

performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

C. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

COMMERCIAL AUTO

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2) of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:
 - (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
2. The following replaces Paragraph A.2.a.(4) of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:
 - (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph C.1. of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Covered Autos Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

- (1) The most we will pay for "loss" to any one "auto" that you hire, rent or borrow is the lesser of:
 - (a) \$50,000;
 - (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- (2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
- (3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.
- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".
- (5) This Coverage Extension does not apply to:
 - (a) Any "auto" that is hired, rented or borrowed with a driver; or
 - (b) Any "auto" that is hired, rented or borrowed from your "employee".

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph C.1.b. of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property Coverage

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Property coverage.

COMMERCIAL AUTO

K. AIRBAGS

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. AUTO LOAN LEASE GAP

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

- (a) Overdue lease or loan payments at the time of the "loss";
- (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (c) Security deposits not returned by the lessor;
- (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (e) Carry-over balances from previous loans or leases.

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

APPROVE FOURTH AMENDMENT FOR DESIGN SERVICES AGREEMENT WITH SCHAAF & WHEELER FOR THE SEWER LIFT STATION IMPROVEMENTS PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Fourth Amendment to Service Agreement for Design Professionals with Schaaf & Wheeler Consulting Engineers to provide additional services for the Lift Station Improvements extending the term of the contract for one year.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

Two separate design contracts were awarded to Schaaf & Wheeler Consulting Engineers on November 4, 2015 to prepare construction plans and specifications for rehabilitating sewer lift stations “J” and “K” for \$135,535 and on November 18, 2015 to prepare construction plans and specifications for rehabilitating sewer lift stations “D”, “F”, and “W” for \$148,575.

The designs for each respective contract were substantially complete but the construction plans needed to be revised and repackaged to work on the lift stations in the worst condition first, meet updated requirements, and work through budget constraints relating to construction timing. The revised order for lift station rehabilitation work, starting with the highest priority, is “J”, “W”, “F”, and “K” (Attachment 1). Schaaf & Wheeler previously completed the revisions and repackaging for the Lift Stations J and W Rehabilitation Project that is currently in construction and they are providing construction support for this project. The proposed amendment to this agreement is for a time extension only to allow for the work on lift stations “J” and “W” to be completed with construction support.

The construction plans for lift stations “F” and “K” still need to be revised and repackaged for construction. Staff will be returning early in 2020 to initiate a new

contract for this work. Lift station “D” improvements are on hold while City staff review issues relating to site access.

COMMUNITY ENGAGEMENT: Not Applicable

Replacement of City utility systems is a required function of the City’s Utilities Division and therefore no specific engagement activities were conducted in association with the proposed contract amendment.

ALTERNATIVE ACTIONS:

Council could decide to not amend Schaaf & Wheeler Consulting Engineers’ contract. However, this would eliminate construction support for the project and is not recommended.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On June 3, 2015, Morgan Hill Financing Authority issued sewer revenue bonds.
- On November 4, 2015, City Council awarded a service agreement for design professionals with Schaaf & Wheeler Consulting Engineers for \$135,535 to design the Sewer Lift Station J & K Rehabilitation Project.
- On November 18, 2015, City Council awarded a service agreement for design professionals with Schaaf & Wheeler Consulting Engineers for \$148,575 to design the 2015 Lift Sewer Lift Station Improvements – D, F, & W Project.
- On December 16, 2016, the City Manager authorized the First Amendment to Agreement with Schaaf & Wheeler Consulting Engineers for the Sewer Lift Station J & K Rehabilitation Project.
- On December 16, 2016, the City Manager authorized the First Amendment to Agreement with Schaaf & Wheeler Consulting Engineers for the 2015 Lift Sewer Lift Station Improvements – D, F, & W Project.
- On January 17, 2018, City Council ratified second amendments with Schaaf & Wheeler Consulting Engineers for Professional Design Services for Sewer Lift Stations J, K, D, F, and W.
- On April 4, 2018, City Council awarded the Sanitary Sewer Lift Stations J & W Rehabilitation Project to Pacific Infrastructure Corporation for \$1,153,000.
- On June 6, 2018, the City Council adopted the Capital Improvement Program for fiscal years 2018-19 through 2023-24.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this contract amendment (Attachment 2), extending the term.

CEQA (California Environmental Quality Act):

Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. Project Location Maps
2. Fourth Amendment-Schaaf & Wheeler 12-18-19



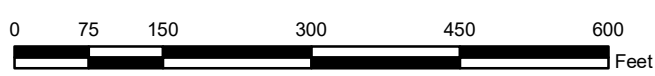
Attachment: Project Location Maps (2599 : Approve Fourth Amendment for Design Services Agreement with Schaaf & Wheeler)



Engineering and Utilities Department
CIP-Engineering Division

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

SITE MAP
'J' Lift Station Oak Ridge Road





CITY OF MORGAN HILL

Engineering and Utilities Department
CIP-Engineering Division

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

SITE MAP

'W' Lift Station Watsonville Rd.

0 37.5 75 150 225 300
 Feet





Engineering and Utilities Department
CIP-Engineering Division

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

SITE MAP 'F' Lift Station Holiday Drive

0 45 90 180 270 360
 Feet





4.a

Attachment: Project Location Maps (2599 : Approve Fourth Amendment for Design Services Agreement with Schaaf & Wheeler)

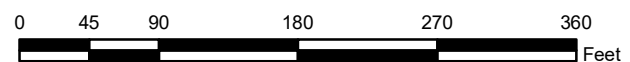


CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP-Engineering Division**

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

SITE MAP 'K' Lift Station Dunne Avenue



FOURTH AMENDMENT TO AGREEMENT SCHAAF & WHEELER CONSULTING ENGINEERS

This FOURTH AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and SCHAAF & WHEELER CONSULTING ENGINEERS, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Fourth Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of December 17, 2015, for consultant services for a maximum compensation of ONE HUNDRED FORTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$148,575.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of December 16, 2016, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was extended to December 30, 2017, the amount of compensation was not increased.
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 18, 2017 under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was extended to December 30, 2018, the amount of compensation was not increased.
5. The CITY and CONSULTANT entered into a "Third Amendment to Agreement" made as of December 21, 2018 under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was extended to December 30, 2019, the amount of compensation was not increased. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First, Second and Third Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 17, 2015, until December 30, 2020.

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Fourth Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendments, the terms of this Fourth Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

**SCHAAF & WHEELER CONSULTING
ENGINEERS**

Donald A. Larkin, City Attorney

Date: _____

By: _____

Charles D. Anderson
 Title: President

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: _____

12/12/19

By: _____

LEIF M. COOPER

Title: _____

TREASURER

Print Name and Title of Signer.

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

Date: _____

12/12/19

**THIRD AMENDMENT TO AGREEMENT
SCHAFF & WHEELER CONSULTING ENGINEERS**

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on December 21, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and SCHAFF & WHEELER CONSULTING ENGINEERS, a California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code and the action of the Morgan Hill City Council taken on November 18, 2015.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of December 17, 2015, for consultant services for a maximum compensation of ONE HUNDRED FORTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$148,575.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of December 16, 2016, under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was extended to December 30, 2017. The amount of compensation was not increased.
4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of December 18, 2017, under which the term of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was extended to December 30, 2018. The amount of compensation was not increased. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 17, 2015, until December 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 4.2 shall be amended and replaced in its entirety by the following:

"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."

C. Paragraph 5 shall be amended and replaced in its entirety by the following:

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

D. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

"7.2.2. Workers Compensation.

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

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

"9. Compliance with Law.

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

marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

[Signatures on Next Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Michelle Bigelow
 City Clerk
 Date: 12/21/18

APPROVED AS TO FORM:

Cynthia Olson
 City Attorney
 Date: 12-20-18

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 12/20/18

SCHAAF & WHEELER CONSULTING
 ENGINEERS

[Signature]
 By:
 Title: VICE PRESIDENT
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: 11/20/2018

[Signature]
 By:
 Title: SECRETARY
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 11/20/18

12604-15-191

EXHIBIT "1"**SECOND AMENDMENT TO AGREEMENT
SCHAAF & WHEELER CONSULTING ENGINEERS**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/18/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, SCHAAF & WHEELER CONSULTING ENGINEERS, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon City of Morgan Hill City Manager's authority.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals-2015 Lift Sewer Station Improvements D, F, & W" made as of December 17, 2015, for consultant services for a maximum compensation of \$148,575 ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of December 16, 2016, under which the term of the CONSULTANT AGREEMENT, as amended, was extended to December 30, 2017. The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 17, 2015, until December 30, 2018. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Deputy
 City Clerk

Date: 12/19/17

APPROVED AS TO FORM:

City Attorney

Date: 12-14-17

CITY OF MORGAN HILL

City Manager

Date: 12-18-17

SCHAAF & WHEELER CONSULTING
 ENGINEERS

By:

Title: PETER JORGENSEN V.P.

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: DEC 6, 2017

By:

Title: LEIF M. CORNEN, TREASURER

Print Name and Title of Signer.

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

Date: 12/6/2017

EXHIBIT A

126-09-15-141

**FIRST AMENDMENT TO AGREEMENT
SCHAAF & WHEELER CONSULTING ENGINEERS**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 12/16/16 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, SCHAAF & WHEELER CONSULTING ENGINEERS, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Manager's authority.
2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals-2015 Lift Sewer Station Improvements D, F & W" made as of December 17, 2015, for consultant services for a maximum compensation of \$148,575 ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from December 17, 2015, until December 30, 2017."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

City Clerk

Date: 12/20/16

APPROVED AS TO FORM:

City Attorney

Date: 12/16/17

CITY OF MORGAN HILL

City Manager

Date: 12/16/16

Schaaf & Wheeler Consulting Engineers

By:

PERRE JORGENSEN

Title:

VICE PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice

Date:

President

12/19/16

By:

Title:

LEIF M. COBURN / ASST. TREASURER

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary,

Chief Financial Officer or Assistant Treasurer

Date:

12/19/16

126-04-15-1A1

**SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
2015 LIFT SEWER STATION IMPROVEMENTS - D, F, & W**

THIS AGREEMENT is entered into and becomes effective on 12/17/15 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Schaaf & Wheeler Consulting Engineers, a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on November 18, 2015.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 30, 2016 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be preparing and plans, specifications and estimates for upgrading the existing lift stations by replacing and relocating the motor control centers (MCC), cabinets and their supports; rebuilding and/or relocating electric meter assemblies; replacing check valves, gate valves, and their appurtenances in the valve vaults; preparing surface and recoating the wet wells and adjacent manholes; concrete site work; asphalt concrete paving to improve maintenance vehicle site access; providing short retaining structures to reduce slope sloughing; site lighting improvements; and gate access improvements. The work will include coordinating with PG&E for an upgraded or new service; the design of a new access road for lift station "D"; and utility relocations and landscaping/irrigation modifications, as necessary and as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$148,575.00. Total compensation under this Agreement shall not exceed One Hundred Forty-Eight Thousand Five Hundred Seventy-Five dollars and shall be billed based on the rate and basis set forth in **Exhibit B**.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

Schaaf & Wheeler Consulting Engineers
1171 Homestead Road, Suite 255
Santa Clara, CA 95050

Address of CITY is as follows:

Kevin O'Connell, P.E.
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

15. **Maintenance of Records.**

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

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

- 15.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. **Time of Essence.** Time is of the essence in the performance of this Agreement.
18. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY.
19. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. **Defense and Indemnification.**
- 20.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

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

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

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

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

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

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

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

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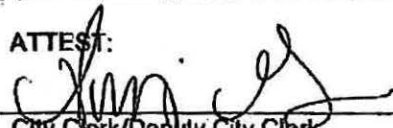
25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

ATTEST:


City Clerk/Deputy City Clerk

Michelle Wilson
Print Name

Date:

12/17/15

APPROVED AS TO FORM:

Renee Surza
City Attorney

Renee Surza
Print Name

Date:

Gary M. Baum

CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

Date:

12/17/15

Schaaf & Wheeler Consulting Engineers

By:

Peder J. Jorgensen, V.P.
Title: *PEDER JORGENSEN, V.P.*
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date:

11/5/15

By:

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

Date:

11-5-15

Exhibit A

Scope of Services

Task 1 – Prepare Plans, Specifications and Estimates

A. Perform Topographic Survey

Perform topographic survey for each site. Survey will be on a project-specific datum.

B. Coordinate with Utility Companies

Coordinate with utility companies to determine utility locations and work with utility companies as necessary to relocate conflicting utilities.

C. Coordinate with PG&E

Coordinate and prepare all permit applications as required by PG&E in order to complete the project. It is anticipated that the existing electrical service for each site will be sufficient.

D. Attend Design Meetings and Perform Site Visits

Attend all design meetings and all necessary site visits to complete the project (Assumes 6 meetings).

E. Prepare Project Schedules and Cost Estimates

Prepare 30%, 60%, and 100% project schedules and critical path construction cost estimates. Final plans will be submitted on mylar for duplication. Electronic files will be provided to the City as well.

F. Permit Applications

Prepare and submit all permit applications required for the project.

Task 2 – Bidding Support

A. Addendums/Plan Revisions

Prepare addendums, sketches, plan revisions, and answer bidder questions. Assumes preparation of one addendum including necessary plan revisions, and attendance at preconstruction meeting.

Task 3 – Construction Support

A. Design Clarification and Correction

Provide design clarifications and corrections to design errors or fill in design gaps as requested by Contractor.

B. Submittal Review

Provide submittal review for critical equipment submittals, including pumps, electrical panels, piping and other critical materials. Assumes two reviews for each submittal.

C. Change Order Review

Provide review of change orders and recommend for acceptance as needed.

D. Site Visits

Provide construction site visits (Assumes 10 site visits).

E. Weekly Construction Meetings

Attend weekly construction meetings as requested by City (Assumes 20 meetings).

F. Record Drawings

Contractor will provide marked-up drawings when the project is complete. Review the marked-up drawings for completeness and accuracy. Provide "as-built" record drawings on mylar using the marked-up Contractor drawings.

Optional Tasks

1. Prepare legal descriptions access easements to Lift Station D, three;
2. Soils investigation for access road;

3. Detail design of access road and retaining walls for road;
4. Up to six(6) potholes for utility location at Lift Station D if the access drive option is approved for final design.

Exhibit B
Schedule of Compensation Rates

City of Morgan Hill 2015 Lift Stations D, F and W Rebuild Schaaf & Wheeler Fee Proposal - October 6, 2015		Project Manager	Senior Engineer	Lead Engineer	Schaaf & Wheeler Subtotal	City Engineering, Technical Engineering Subcontractor	City Engineering, Surveying Subcontractor	City Engineering, Locating Subcontractor	City Engineering, Geotechnical Engineering Subcontractor	Information Monitor (10%)	Total
Hourly Rate		\$220	\$192	\$180							
Task 1: Prepare Plans, Specifications & Estimates		82	92	120	\$ 63,840	\$ 10,000	\$ 5,000	\$ -	\$ -	\$ 2,900	\$ 79,740
A	Perform Topographic Survey	2	2		\$ 830		\$ 5,000			\$ 500	\$ 6,330
B	Coordinate w/ Utility Companies	2	2		\$ 830					\$ -	\$ 830
C	Coordinate w/ PG&E	2	2		\$ 390					\$ -	\$ 390
D	Design Meetings & Site Visits (Assumes 6)	12	12		\$ 4,980					\$ -	\$ 4,980
E-1	Preliminary Design Report (30%)	30	30	20	\$ 15,420	\$ 3,000				\$ 300	\$ 18,720
E-2	60% Plans, Specifications & Estimates	20	20	40	\$ 17,300	\$ 10,000				\$ 1,000	\$ 28,300
E-3	100% Plans, Specifications & Estimates	18	18	40	\$ 12,640	\$ 5,000				\$ 500	\$ 18,140
F	Permit Applications	8	8		\$ 1,560					\$ -	\$ 1,560
Task 2: Bidding Support		4	4	4	\$ 2,240	\$ 500	\$ -	\$ -	\$ -	\$ 50	\$ 2,810
A	Prepare Addendums, Sketches, Plan Revisions, and Answer Bidders Questions	4	4	4	\$ 2,240	\$ 500				\$ 50	\$ 2,810
Task 3: Construction Support Services		26	24	24	\$ 25,440	\$ 3,500	\$ -	\$ -	\$ -	\$ 350	\$ 29,700
A	Respond to Contractor questions, RFIs, Provide Design Clarifications as Needed	4	4	8	\$ 2,660	\$ 500				\$ 50	\$ 3,410
B	Contractor Submittal Review	20	20		\$ 4,900	\$ 2,500				\$ 250	\$ 7,650
C	Change Order Review		8		\$ 1,560					\$ -	\$ 1,560
D	Construction Site Visits (Assumes 10)	12	12	6	\$ 5,880					\$ -	\$ 5,880
E	Weekly Construction Meetings (Assumes 20)	10	10		\$ 4,150					\$ -	\$ 4,150
F	Prepare Record Drawings			30	\$ 4,500	\$ 500				\$ 50	\$ 5,050
PROJECT TOTALS (without optional tasks)		112	150	188	\$82,040	\$ 22,000	\$ 5,000	\$ -	\$ -	\$ 2,700	\$ 111,740
Optional tasks		24	22	20	\$ 22,320	\$ -	\$ -	\$ 5,600	\$ 7,550	\$ 1,315	\$ 34,785
	Legal Description	2	8		\$ 2,000					\$ -	\$ 2,000
	Soils Investigation	2	4		\$ 1,220				\$ 7,550	\$ 755	\$ 9,425
	Detailed Design of Site Modifications, (S-D)	20	60	20	\$ 19,100		\$ 5,600			\$ 540	\$ 25,240
PROJECT TOTALS (with optional tasks)		140	180	208	\$104,410	\$ 22,000	\$ 5,600	\$ 5,600	\$ 7,550	\$ 4,015	\$ 148,875



Hourly Rates for Schaaf & Wheeler

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

Classification	Rate/Hr	Classification	Rate/Hr
Project Manager	\$220	Construction Manager	\$210
Project Engineer	\$210	Senior Resident Engineer	\$180
Senior Engineer	\$195	Resident Engineer	\$160
Associate Engineer	\$175	Assistant Resident Engineer	\$140
Assistant Engineer	\$150	Construction Inspector	\$130
Junior Engineer	\$140		
Designer	\$135		
Technician	\$130		
Engineering Trainee	\$100		

Principal time is \$300 per hour and is charged only for work done in preparation for litigation and other very high level-of-expertise assignments. Court or deposition time as an expert witness is charged at \$400 per hour with a minimum of four hours per day.

Materials and Services

Subcontractors, special equipment, outside reproduction, data processing, computer services, etc., will be charged at 1.10 times cost.

These rates are subject to revision semi-annually.

Effective 1/1/15

10/06/2015

2

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

EXHIBIT C
SCHEDULE OF PERFORMANCE

30% Design Documents to the City 42 Calendar days after Notice to Proceed

60% Design Documents to the City 84 Calendar days after Notice to Proceed

100% Design Documents to the City 120 Calendar days after Notice to Proceed



SCHA&WH-01

4.b

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/06/2018

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

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

PRODUCER License # 0E67768

IOA Insurance Services
3875 Hopyard Road
Suite 200
Pleasanton, CA 94588

CONTACT NAME: Michelle Costa

PHONE (A/C, No, Ext): (925) 660-3508 50028

FAX (A/C, No): (925) 416-7869

E-MAIL ADDRESS: Michelle.Costa@ioausa.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: RLI Insurance Company

13056

INSURED

Schaaf & Wheeler, Consulting Civil Engineers
1171 Homestead Road, Suite 255
Santa Clara, CA 95050

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:			PSB0001578	06/06/2018	06/06/2019	EACH OCCURRENCE \$ 2,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000 MED EXP (Any one person) \$ 10 PERSONAL & ADV INJURY \$ 2,000 GENERAL AGGREGATE \$ 4,000 PRODUCTS - COMP/OP AGG \$ 4,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			PSA0002442	06/06/2018	06/06/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			PSE0001370	06/06/2018	06/06/2019	EACH OCCURRENCE \$ 3,000 AGGREGATE \$ 3,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		PSW0001278	12/11/2018	12/11/2019	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000 E.L. DISEASE - POLICY LIMIT \$ 1,000
A	Professional Liab.			RDP0032879	06/06/2018	06/06/2019	Per Claim 5,000
A	Professional Liab.			RDP0032879	06/06/2018	06/06/2019	Aggregate 5,000

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

RE: 2015 Lift Sewer Station Improvements - D, F & W

General Liability: The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are included as Additional Insured on Primary & Non-Contributory basis with Waiver of Subrogation included, as required by written contract. Hired & Non-Owned Auto Liability includes Blanket Additional Insured and Blanket Waiver of Subrogation. Workers' Compensation: Waiver of Subrogation is in favor of City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, as required by written contract.

CERTIFICATE HOLDER

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

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



SCHA&WH-01

4.b

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/5/2018

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

PRODUCER License # 0E67768 IOA Insurance Services 3875 Hopyard Road Suite 240 Pleasanton, CA 94588	CONTACT NAME: Michelle Costa PHONE (A/C, No, Ext): (925) 660-3508 50028 FAX (A/C, No): (925) 416-7869 E-MAIL ADDRESS: Michelle.Costa@ioausa.com
INSURER(S) AFFORDING COVERAGE	
INSURER A : RLI Insurance Company	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
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A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			PSA0002442	06/06/2018	06/06/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			PSE0001370	06/06/2018	06/06/2019	EACH OCCURRENCE \$ 3,000 AGGREGATE \$ 3,000
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CERTIFICATE HOLDER

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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

Policy Number: PSB0001578
 Named Insured: Schaaf & Wheeler, Consulting Civil Engineers

RLI Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RLIPack® FOR PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "product-completed operations hazard".

2. The insurance provided to the additional insured by this endorsement is limited as follows:

- a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
- b. This insurance does not apply to the rendering of or failure to render any "professional services".
- c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.

3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an

additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
- b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.

4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 04 03 06

(Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

All persons or organizations that are party to a contract that requires you to obtain this agreement, provided you executed the contract before the loss.

Job Description

Jobs performed for any person or organization that you have agreed with in a written contract to provide this agreement.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No. PSW0001278

Endorsement No.

Insured

Insurance Company

Schaaf & Wheeler, Consulting Civil I

RLI Insurance Company

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

A. Broad Form Named Insured

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

B. Employees As Insureds

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Blanket Additional Insured

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

D. Blanket Waiver Of Subrogation

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out

of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

E. Employee Hired Autos

1. The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance** Condition in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

F. Fellow Employee Coverage

SECTION II – COVERED AUTOS LIABILITY COVERAGE, **Exclusion B.5.** does not apply if you have workers compensation insurance in-force covering all of your employees.

G. Auto Loan Lease Gap Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the **PHYSICAL DAMAGE COVERAGE** section of the policy; and
2. Any:
 - a. Overdue lease/loan payments at the time of the "loss";

- b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
- c. Security deposits not returned by the lessor;
- d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- e. Carry-over balances from previous loans or leases.

H. Glass Repair – Waiver Of Deductible

SECTION III – PHYSICAL DAMAGE COVERAGE,

D. Deductible is amended by adding the following:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

I. Personal Effects Coverage

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**:

c. Personal Effects Coverage

In the event of a total theft loss of your covered "auto" we will pay up to \$400 for "loss" to wearing apparel and other personal effects which are:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto";

No deductible applies to Personal Effects Coverage.

J. Hired Auto Physical Damage Coverage

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**:

d. Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Liability Coverage and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

- (1) The most we will pay for "loss" in any one "accident" to a hired, rented or borrowed "auto" is the lesser of:
 - (a) \$60,000
 - (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- (2) An adjustment for depreciation and physical condition will be made in the event of a total "loss".
- (3) If a repair or replacement results in better than like kind or quality, we will not pay for the betterment.
- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned auto will apply.
- (5) This Coverage Extension will not apply to:
 - (a) Any "auto" that is hired, rented or borrowed with a driver; or
 - (b) Any "auto" that is hired, rented or borrowed from your "employee".

K. Hired Auto Physical Damage – Loss Of Use

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**:

- e. We will pay sums which you legally must pay to the lessor of a covered "auto" which you have leased without a driver for thirty (30) days or less for the lessor's loss of use of the covered "auto", provided:
 - (1) This insurance provides comprehensive, specified causes of loss or collision covered on the covered "auto";
 - (2) The loss of use results from the covered "auto" being damaged in an "accident" while you are leasing it.

We will pay up to a maximum limit of \$1,500 for this covered extension.

L. Hired Car – Worldwide Coverage

The following is added to **SECTION II – COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions**:

f. Hired Car – Worldwide Coverage

- (1) We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" which occurs outside of the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada resulting from the maintenance, or use of any covered "auto" of the private passenger type you lease, hire, rent or borrow without a driver for thirty (30) days or less.
- (2) With respect to any claim made or "suit" instituted outside the United States of America, the territories and possessions of the United States of America, Puerto Rico, and Canada:

- (a) You shall undertake the investigation, settlement and defense of such claims and "suits" and keep us advised of all proceedings and actions.
- (b) You will not make any settlement without our consent.
- (c) We will reimburse you:
 - (i) For the amount of damages because of liability imposed upon you by law on account of "bodily injury" or "property damage" to which this insurance applies, and
 - (ii) For all reasonable expenses incurred with our consent in connection with the investigation, settlement or defense of such claims or "suits". Reimbursement for expenses will be part of the Limit of Insurance for liability coverage shown in the Business Auto Coverage Declarations, and not in addition to such limits.
- (3) The limit of Insurance for Liability Coverage shown in the Business Auto Coverage Declarations is the most we will reimburse you for the sum of all damages imposed on you, as set forth in paragraph 2.c. above, and all expenses incurred by you arising out of any single "accident" or "loss".
- (4) You must maintain the greater of the following primary auto liability insurance limits:
 - (a) Compulsory admitted insurance with limits required to be in force to satisfy the legal requirements of the jurisdiction where the accident occurs; or
 - (b) Insurance limits required by law and issued by a government entity or by an insurer licensed or permitted by law to do business in the jurisdiction where the "accident" occurs; or
 - (c) Auto liability insurance limits of at least \$300,000 combined single limit or \$100,000 per person/\$300,000 per accident Bodily Injury, \$100,000 Property Damage.

If you fail to comply with the above, this insurance is not invalidated. However, in the event of a "loss", we will pay only to the extent that we would have been liable had you so complied.
- (5) The insurance provided by this coverage extension is excess over any other collectible insurance available to you whether on a primary, excess contingent or any other basis.

M. Temporary Transportation Expenses

SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions, subparagraph a. **Transportation Expenses** is deleted and replaced by the following:

a. Transportation Expenses

- (1) We will pay up to a maximum of \$1,500 for temporary transportation expense incurred by you because of Physical Damage to a covered "auto".
- (2) We will pay only for those covered "autos" for which you carry Comprehensive, Collision or Specified Case of Loss Coverage.
- (3) We will pay only for those expenses incurred by you during the period of time that begins twenty-four (24) hours after the covered "loss" and ends at the time when the covered "auto" can be reasonably repaired or replaced.
- (4) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

N. Amended Bodily Injury Definition – Mental Anguish

The following is added to **SECTION V – DEFINITIONS, Definition C.:**

"Bodily injury" also includes mental anguish, but only when the mental anguish arises from other bodily injury, sickness or disease.

O. Airbag Coverage

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions 3.a.:**

However, this exclusion will not apply to accidental discharge of an airbag due to mechanical or electrical breakdown.

P. Amended Insured Contract Definition – Railroad Easement

SECTION V – DEFINITIONS paragraph H. "Insured contact" is modified as follows:

- 1. Paragraph H.3. is replaced by the following:
 - 3. Any easement or license agreement.
- 2. Paragraph H.6.a. is deleted.

Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound

SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions, exception paragraph a. to exclusion 4.c. and 4.d. is deleted and replaced with the following:

- a. Equipment and accessories used with such equipment, except for tapes, records, discs or other electronic media device, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or is removable from the housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "autos" electrical system, in or upon the covered "autos"; or

R. Notice Of And Knowledge Of Occurrence

SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties In The Event Of Accident, Claim Suit Or Loss, subparagraph a. is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss" including:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured person and witnesses.

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (1) You, if you are an individual;

- (2) A partner if you are a partnership; or

- (3) An executive officer or insurance manager, if you are a corporation.

S. Unintentional Errors Or Omissions

SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions; 2. Concealment Misrepresentation Or Fraud is amended by adding the following:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

T. Towing Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, A.2. Towing, is deleted and replaced by the following:

- 2. We will pay up to \$750 for towing and labor costs incurred each time a covered "auto" is disabled due to a covered cause of loss. However:
 - a. All labor must be performed at the place of disablement; and
 - b. If the covered auto is a private passenger type no deductible applies; and
 - c. If the covered auto is not of the private passenger type our obligation to pay will be reduced by a \$250 deductible per disablement.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

APPROVE SERVICE AGREEMENT FOR DESIGN PROFESSIONALS FOR COMPACTION TESTING AND SPECIAL INSPECTION

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer agreements with Engeo, Inc. in the amount of \$350,000 and Construction Testing Services, Inc. in the amount of \$150,000 for compaction testing and special inspection services for various capital improvement projects.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On June 6, 2018, the City Council adopted the FY 2018-19 through FY 2023-24 Capital Improvement Program (CIP). Many of these CIP construction projects require on-call compaction testing and/or special inspection to ensure construction standards are met and the proper oversight is provided.

On October 23, 2019, staff sent out a Request for Proposal to four firms to provide testing services and special inspection on an as-needed basis for the Engineering and Utilities Department. Two proposals were received on November 15, 2019. In their respective proposal, Engeo, Inc. and Construction Testing Services, Inc. both demonstrated the expertise in the field of compaction testing and special inspection to handle this work. Staff recommends the approval of a City Services Agreement for Design Professional to Engeo, Inc. in the amount of \$350,000, and Construction Testing Services, Inc. in the amount of \$150,000.

Engeo, Inc. has provided quality services previously to the City of Morgan Hill. Staff is recommending entering into an agreement with a second company, Construction Testing Services, Inc., to provide an alternative option to provide for redundancy in service during times of heavy needs and a backup if one company cannot provide immediate service.

COMMUNITY ENGAGEMENT: Not Applicable

Compaction testing and special inspection are necessary components of the City Capital Improvement Program and therefore no specific engagement activities were conducted in association with the proposed agreements.

ALTERNATIVE ACTIONS:

City Council may limit the award of the agreement to one consultant only or direct staff to perform another RFQ for this service.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

June 6, 2018 – City Council adopted the FY 2018-19 to FY 2023-24 Capital Improvement Program

FISCAL AND RESOURCE IMPACT:

Funding for these agreements will come from the various capital improvement projects included in the adopted Capital Improvement Program, and related appropriations are included in the project adopted budgets.

CEQA (California Environmental Quality Act):

Not a project.

The agreements are not considered as projects and any individual projects in the Capital Improvement Program shall be individually reviewed under CEQA.

LINKS/ATTACHMENTS:

1. City Service Agreement for Design Professional Engeo 12-18-19
2. City Service Agreement for Design Professionals Construction Testing Services 12-18-19

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS ENGEO, INCORPORATED

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and ENGEO INCORPORATED 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, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be testing services as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$350,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Three-Hundred-Fifty-Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7.1. **Insurance Types and Amounts.**

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

Engeo Incorporated
6399 San Ignacio Avenue, Suite 150
San Jose, CA 95119

Address of CITY is as follows:

Attn: Yat Cho
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM"). CONSULTANT'S aggregate liability hereunder shall be limited by CITY to the amount of available coverage required in Section 7.1.5.1 of this Agreement.

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

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

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

Engeo Incorporated

 City Attorney

By:

 Donald A. Larkin
 Print Name

Uri Eliahu President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 12/5/19

By:

Lora Dominick Treasurer

Print Name and Title of Signer.

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

Date: 12/5/19

**EXHIBIT A
SCOPE OF SERVICES**

EXHIBIT A –
Scope of Services

Inspection including compaction testing A/C and Soil/Sampling, A/C Placement	<u>\$125/Hr</u>
Steel Inspection	<u>\$135/Hr</u>
Concrete Inspection	<u>\$135/Hr</u>
Welding Inspection	<u>\$150/Hr</u>
Moisture Density Curve per ASTM	<u>\$400/Test</u>
Sieve Analysis	<u>\$160/Test</u>
R Value	<u>\$420/Test</u>
A/C Unit Wt.	<u>\$400/Test</u>
Concrete Cylinders/Compression Test	<u>\$130/Set of 4</u>

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

PREFERRED CLIENT FEE SCHEDULE PROFESSIONAL SERVICES

Effective March 2019

President	\$380.00 per hour
Principal Engineer/Geologist/Seismologist.....	\$290.00 per hour
Associate Engineer/Geologist/Seismologist.....	\$245.00 per hour
Senior Engineer/Geologist/Seismologist	\$215.00 per hour
Project Engineer/Geologist/Seismologist.....	\$195.00 per hour
Environmental Scientist.....	\$180.00 per hour
Staff Engineer/Geologist/Seismologist	\$174.00 per hour
Assistant Engineer	\$140.00 per hour
Construction Services Manager.....	\$170.00 per hour*
Senior Field Representative II.....	\$150.00 per hour**
Senior Field Representative I.....	\$135.00 per hour**
Field Representative	\$125.00 per hour**
Environmental Technician.....	\$130.00 per hour**
Senior Laboratory Technician	\$155.00 per hour
Laboratory Technician.....	\$140.00 per hour
Senior CAD Specialist.....	\$145.00 per hour
CAD Specialist	\$135.00 per hour
GIS Analyst.....	\$150.00 per hour
Network Administrator.....	\$195.00 per hour
Project Assistant.....	\$118.00 per hour

* Two-hour minimum portal to portal.

* **OVERTIME RATES:** Rates increased by factor of 1.5 for all hours worked in excess of eight (8) Monday through Friday, and the first eight (8) hours worked on Saturday. Rates increased by factor of 2.0 for all hours worked in excess of twelve (12) Monday through Friday, all hours worked in excess of eight (8) on Saturday and all hours worked on Sunday and holidays.

** For Prevailing Wage projects, increase the hourly rate by \$15.

** Rates increased by factor of 1.25 for night shift hours (hours commencing after 4:00 p.m. or before 4:00 a.m.); rates increased by factor of 1.875 (an additional factor of 1.5) for all night shift hours in excess of eight (8).

ADDITIONAL SERVICES OFFERED

In addition to our core services of geotechnical, hydrologic and environmental engineering, including construction-phase testing and observation, ENGEO provides clients with services for establishment and management of Geologic Hazard Abatement Districts (GHAD) and for Entitlement and Permitting Support (EPS). For more information about these services and associated pricing, please contact ENGEO at (925) 866-9000.

OTHER FEES

- Equipment and materials will be charged in addition to the above hourly rates.
- Outside Consultants, Subcontracted Services and Equipment Rental Cost plus 20%
- Deposition, Mediation, Arbitration, or Court Appearance (Minimum Charge)..... \$2,000.00 half day, \$4,000.00 full day

TERMS

Invoices will be submitted at completion of work or at approximately four week intervals and are due and payable upon receipt. Statements will be issued at monthly intervals. Charges not paid within 30 days of invoice date will accrue a late charge at a rate of 1.5 percent per month. In the event it becomes necessary to commence suit to collect amount due, Client agrees to pay attorney's fees and costs, as the court may deem reasonable until amount is paid. Fees will be applicable for one year from the effective date above; thereafter, fees will be adjusted annually. Our fees will be billed using an invoice format produced by a standardized accounting software package. A more customized itemization of charges and backup data will be provided upon Client's requests, but at additional fees. Final reports may be withheld until outstanding invoices are paid in full.

Many risks potentially affect ENGEO by virtue of entering into this agreement to perform services on behalf of client. A principal risk is the potential for human error by ENGEO. For client to obtain the benefit of a fee that includes a nominal allowance for dealing with our liability, client agree to limit ENGEO's liability to Client and all other parties for claims arising out of our performance of the services described in the agreement. The aggregate liability will not exceed \$50,000 (or ENGEO's fee, whichever is greater, but not more than \$1,000,000) for professional acts, errors, or omissions, including attorney's fees and costs that may be awarded to the prevailing party and client agrees to indemnify and hold harmless ENGEO from and against all liabilities in excess of the monetary limit established above.

EQUIPMENT AND MATERIALS CHARGES

DESCRIPTION	COST PER UNIT (\$)	UNIT
Air Content Meter	7.00	hour
Bailers (Disposable)	8.00	each
Concrete Crack Monitor	20.00	each
Coring Machine	25.00	hour
Double-Ring Infiltrometer	40.00	hour
Electronic Water Level Indicator	5.00	hour
Engineering Analysis Software	28.00	hour
Equipment Transport(er)	100.00	hour
Exploration Equipment (Percussion Penetrometer)	50.00	hour
Floor Flatness/Floor Level Equipment	20.00	hour
Generator	15.00	hour
GIS Website Portal Maintenance	100.00	month
GPR/GPS Handheld Device	10.00	hour
GPR/GPS/Drone Survey Grade Equipment	175.00	hour
Hand Auger and Soil Sampler	15.00	hour
Hydraulic Pull-Test Equipment	25.00	hour
Interface Probe	2.00	hour
Magnetic Particle Test Equipment	25.00	hour
Moisture Content Test Equipment	6.00	hour
Multi-Parameter Water Meter	15.00	hour
pH Meter/Turbidity Meter	10.00	hour
Photo Ionization Detector	15.00	hour
Pachometer	100.00	hour
Sampling Tubes	10.00	each
Sand Cone Equipment and Material	5.00	hour
Schmidt Hammer	20.00	hour
Seisometer	50.00	hour
Skidmore Wilhelm Bolt Tension Calib.	40.00	hour
Slope Inclinator/Settlement Indicator/VW Readout	50.00	hour
Torque Wrench	15.00	hour
Transfer Pump	3.00	hour
Ultrasonic Equipment	50.00	hour
Vapor Emission Test Kit	40.00	kit
Vector Conversion	60.00	conversion
Vehicle, mileage, nuclear gauge, misc. equipment, wireless communication	27.00	hour
Vehicle, mileage, misc. equipment, wireless communication	18.00	hour
Vibration Monitor	1800.00	month
Water Sampling Pumps	20.00	hour
Bridge Toll	actual	actual
Mileage	.78	mile
Parking	actual	actual
AutoCAD, Civil 3D, GIS, Drone Data Processing	25.00	hour
Photocopies Black & White	0.25	each
Photocopies Color 11 x 17	1.50	each
Photocopies Color 8½ x 11	1.00	each
Plot - Black & White	3.00	square foot
Plot - Color	4.00	square foot
Postage	actual	actual
Scan - Black & White	1.50	each
Scan - Color	3.75	each
Telephone	0.50	minute

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Performance schedules for work to be performed will be determined on a project by project basis and approved by the City Manager's designated project manager prior to work on each specific project commencing.

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS CONSTRUCTION TESTING SERVICES, INC.

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

1. **City Authority.** This Agreement is entered into pursuant to 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, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be testing services as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$150,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One-Hundred-Fifty-Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

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

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

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

7.1. **Insurance Types and Amounts.**

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

Construction Testing Services, Inc.
2033 Gateway Place #500
San Jose, CA 95110

Address of CITY is as follows:

Attn: Yat Cho
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

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

21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT

as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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:

Construction Testing Services, Inc.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

Aaren Saus, Vice President

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

Date: _____

Date: *12/5/19*

By: *Ryan Keegan*

Ryan Keegan - Chief Financial Officer

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

Date: *12/5/19*

**EXHIBIT A
SCOPE OF SERVICES**

EXHIBIT "A"

SCOPE OF SERVICES

GENERAL CONSTRUCTION TESTING SERVICES FOR THE CITY OF MORGAN HILL, CA

The purpose of this Scope of Services is to detail the general construction testing services to be provided to the City of Morgan Hill, CA.

The consultant shall provide construction testing services on an on-call basis in support of the construction of municipal infrastructure in the public right-of-way at various locations in the City of Morgan Hill. Typical municipal infrastructure includes trenching, backfill, asphalt and concrete paving, water lines and services, sanitary storm and sewer lines, manholes. Curb, gutter, sidewalks, landscaping, street lights, underground conduits and vaults. Typical testing services including soils testing, field compaction testing asphalt and concrete quality control and performance testing.

The consultant shall perform the following tasks in carrying out these services:

TASK – CONSTRUCTION TESTING SERVICES

The Consultant shall provide, develop and implement a construction testing system which will ensure that the contractor complies with construction documents.

A. Response Time and Job Presence:

The consultant shall provide construction testing services within 48 hours of request by the City Project Manager or designated representatives. Technicians will be expected to remain at the jobsite for as long as needed to perform the testing or as directed by City Project Manager.

B. List of Tasks and Special Inspection Services:

All services shown below for the Contract Inspector shall provide fully typed reports (2 copies min) verifying and detailing results of inspections and/or tests.

Inspection including compaction testing A/C and Soil/Sampling,
A/C Placement

\$ 92 /HR

Steel Inspection

\$ 90 /HR

Concrete Inspection	\$ <u>90</u> /HR
Welding Inspection	\$ <u>90</u> /HR
Moisture Density Curve per ASTM	\$ <u>250</u> EA
Sieve Analysis	\$ <u>150</u> EA
R Value	\$ <u>275</u> EA
A/C Unit Wt.	\$ <u>100</u> EA
Concrete Cylinders/Compression Test	\$ <u>35</u> EA Set

*See attached fee schedule - Exhibit B

EXHIBIT B
SCHEDULE OF COMPENSATION RATES



2019 FEE SCHEDULE - P16943 11/15/19
PERSONNEL FEES AND BASIS OF CHARGES
 INSPECTIONS, ENGINEERING & SPECIAL SERVICES

	Standard Rate/Hour	Discounted Rate/Hour
* FIELD INSPECTION AND LABORATORY SERVICE		
Steel	\$248.00	\$90.00
Nondestructive - UT, MT, PT	\$223.00	\$90.00
Steel Visual/UT Combination	\$223.00	\$90.00
Concrete ACI	\$248.00	\$90.00
Concrete ICC	\$248.00	\$90.00
Masonry	\$218.00	
Fireproofing	\$218.00	
Shear Wall Nailing/Framing/Hold Downs	\$218.00	
Soil Technician w/Nuclear Gauge and/or Sand Cone (<i>portal-to-portal</i>)	\$248.00	\$92.00
Asphalt Technician (<i>portal-to-portal</i>)	\$248.00	\$92.00
Shoring/Soldier Piers	\$218.00	
Roofing & Waterproofing	\$218.00	
Multi-Disciplined Inspector	\$218.00	
Inspector Requiring G1 Pay Grade	\$253.00	
Specialty Inspector or Where Formal Certification is Required	\$218.00	
Field Inspector with Special Enhancement	\$218.00	
Laboratory Technician	\$218.00	
Technician Typist	\$218.00	
**PROFESSIONAL ENGINEERING SERVICES		
Principal Engineer (Civil/Structural)	\$353.00	
Geotechnical Engineer	\$303.00	
Consulting Engineer (Civil/Structural)	\$273.00	
Associate Engineer, Licensed	\$248.00	
Project Manager	\$248.00	\$135.00
Staff Engineer	\$248.00	\$135.00
Field Supervision	\$193.00	\$120.00
ASNT Level III	\$258.00	
Drafting	\$153.00	
Quality Control Manager	QOR	
SPECIAL SERVICES		
Portable and Mobile Laboratories, NDT and Soils	QOR	
* Epoxy Bolt/Expansion Anchor - Installation Observation	\$218.00	
* Epoxy Bolt/Expansion Anchor Proof Load Testing (<i>portal-to-portal</i>)	\$218.00	
* Coring, 1 Person (including equipment) (<i>portal-to-portal</i>)	\$278.00	\$225.00
* Coring, 2 Persons (including equipment) (<i>portal-to-portal</i>)	\$443.00	\$350.00
* Asphalt Coring (<i>portal-to-portal</i>)	\$303.00	\$250.00
Project Research	QOR	
Ultrasonic Testing for Non-Metallic Materials	QOR	
Pavement Rehabilitation Analysis Using Deflections	QOR	
Roof Moisture Survey	QOR	
Soil Drilling Equipment	QOR	
Geotechnical Site Investigations/Foundation Reports	QOR	
Pachometer, Schmidt Hammer, Windsor Probe, Skidmore - Equipment Fee \$115/Day (<i>portal-to-portal</i>)	\$288.00	
Floor Flatness Testing FF/FL - Equipment Fee \$115/Day (<i>portal-to-portal</i>)	\$288.00	
Measuring Moisture Vapor Emission Rate (Calcium Chloride) - \$55/Kit (<i>portal-to-portal</i>)	\$288.00	
Relative Humidity Testing - \$75/Kit (<i>portal-to-portal</i>)	\$288.00	
Ferrosan - Equipment Fee \$115/day (<i>portal-to-portal</i>)	\$288.00	
GPR - Equipment Fee \$115/day (<i>portal-to-portal</i>)	\$343.00	
Administration, Secretarial, Special Projects, Notary, Certified Payroll	\$163.00	\$100.00
Concrete/Grout/Mortar Mix Design Review (less than 48 hours notice - \$500)	\$345.00	\$250.00
Welding Procedure Review (less than 48 hours notice - \$500)	\$345.00	\$250.00
Welder Qualification Test Record (WQTR)	\$250.00	
DSA Interim Reports	\$178.00	
Geotechnical Pad Letter (less than 48 hours notice - \$550)	\$345.00	
Final Letter (less than 48 hours notice - \$550)	\$345.00	\$250.00
EXPERT WITNESS TESTIMONY		
Court appearance, per day	\$2,420.00	
Court appearance, per half day	\$1,210.00	

* Field inspection and laboratory technician services will be billed in accordance with minimums shown on Basis of Charges.

**Professional engineering services will be billed in two hour increments.

BASIS OF CHARGES

GENERAL

Fees for tests and inspection include cost of technician, normal equipment and regular reports. Engineering services will be charged at applicable rates and will require travel and mileage charges for equipment transport and storage per code (portal to portal) from the nearest CTS laboratory. Soils testing with nuclear gauge and/or sand cone equipment and inspections requiring equipment will require applicable travel and mileage charges for equipment transport and storage per code (portal-to-portal) from the nearest CTS laboratory. Fees for special projects, services overseas, or elsewhere in the United States, will be quoted on request. With prior notification to Client; charges are subject to change at any time. Construction Testing Services reserves the right to adjust the rates quoted in this contract based upon any Union or prevailing wage increases and/or changes in any industry requirements.

MINIMUM HOURLY CHARGES – INSPECTION

Technician personnel and the following minimum charges are contractual commitment:

One-half day or less	4 Hours
Over one-half day	8 Hours
Show-up time (less than 2 hours notice = 4 hour charge)	2 Hours

WORKING HOURS AND PREMIUM TIME

Regular workday is the first 8 hours between 6:00 am and 6:00 pm Monday through Friday. Premium time is as follows:

Overtime, Weekdays and Saturdays (first 8 hours)	1.5 x quoted hourly rate
Overtime Saturdays (over 8 hours) and Sundays (first 8 hours)	2 x quoted hourly rate
Overtime Sundays (over 8 hours) and Holidays	3 x quoted hourly rate
Shift differential, swing and graveyard - (Work performed between 2:00 pm and 4:00 am)	12.5%/hour additional to base or quoted rate.

MISCELLANEOUS CHARGES - Only Where Applicable

Notary Services Fee	\$40.00/each	
Facsimile Charges. Plus \$1.00/page (n/c for cover page)	\$7.00/minimum	
Wireless Router/Data Card for Jobsite Internet	\$135.00/day	
iPad Monthly Rental Fee	\$100.00/month	
Electronic Reporting Fees/Subscriptions (PlanGrid, BIM, etc.)	At Cost	
Parking Fees	At Cost	
Air Travel	Cost Plus 10%	
Outside Services	Cost Plus 20%	
Subsistence (per union contract)	\$130.00/day	
Mileage	Standard Federal Rate	
Sample Pickup	\$26.00/each	\$10.00/each
Weekend Sample Pickup	\$105.00/each	
Project Administration	12% of Monthly Invoice	8% of Monthly Invoice
Samples Made by Others: Concrete Cylinders	\$130 + Test	
Samples Made by Others: All Other Tests	\$55.00 + Test	
Laboratory Sample Witness Fee	\$130.00	
Laboratory Sample Storage Fee (per sample)	\$120.00	
EZ Cure Boxes (Thermostatically Controlled Curing Boxes)	QOR	
Returned Check Fee	\$150.00	

TESTS

Testing fees shown include normal time for performing test. Samples requiring special preparation will be charged at the laboratory technician rate. Fees for tests not listed will be quoted upon request. There will be a minimum charge of \$100.00 for any engineering report. Please note some tests may be tested by subconsultants. Samples delivered to the laboratory after 3:00pm or samples needing results within 24 hours will incur a 50% mark-up.

INSURANCE

The liability of Construction Testing Services (CTS) is limited to CTS's contract value.

PAYMENT

Invoices will be submitted monthly or bimonthly for services performed during the preceding month and are payable on receipt. Interest of 1.5% per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days, payment thereafter to be applied first to accrued interest and then to the principle unpaid amount. Attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by client. Visa, MasterCard and American Express payments are accepted however fees will apply. Visa and MasterCard payments require an additional 3% on top of the amount of the invoice being paid. American Express payments require an additional 4% on top of the amount of the invoice being paid.


CONCRETE AND MASONRY TESTS

CONCRETE		Standard Rate/Each	Discounted Rate/Each
Compressive Strength of Cylindrical Concrete Specimens (6x12)	ASTM C39	\$84.00	\$35.00
Compressive Strength of Cylindrical Concrete Specimens (4x8)	ASTM C39	\$84.00	\$35.00
Compressive Strength of Cylindrical Concrete Specimens (Over 8000 PSI)	ASTM C39	\$143.00	
Cylinder molds. 6" x 12" and 4" x 8"	ASTM C470	\$72.00	
Compressive Strength of Lightweight Insulating Concrete	ASTM C495	\$94.00	
Obtaining and Testing Sawed Beams and Drilled Cores of Concrete (Cores)	ASTM C42	\$124.00	\$50.00
Flexural Toughness of Fiber Reinforced Concrete (Round Panel)	ASTM C1550	\$440.00	
Flexural Strength of Concrete (Using Simple Beam with Third-Point Loading)	ASTM C78	\$308.00	
Flex Beams per Caltrans Test Methods	CT523 and CT524	\$308.00	
Length Change of Hardened Hydraulic-Cement Mortar and Concrete (Shrinkage, 1 Sample)	ASTM C157	\$150.00	
Shotcrete Nozzleman Qualification Letter (Per Nozzleman, Per Position)	ACI 506, ASTM C42 and C1140	\$440.00	
Shotcrete Pre-Qualification Cores (Compression and Visual)	ACI 506, ASTM C42 and C1140	\$110.00	
Shotcrete Production Cores	ASTM C1140	\$110.00	
Coefficient of Thermal Expansion	AASHTO T336	\$535.00	
Determining Density of Structural Lightweight Concrete (Cylinders)	ASTM C567	\$405.00	
Standard Specification for Concrete Made by Volumetric Batching and Mixing	ASTM C685	\$965.00	
Cement Quality Sampling	CBC 2010	\$667.00	
Physical Testing of Gypsum, Gypsum Plasters and Gypsum Concrete	ASTM C472	\$55.00	
Splitting Tensile Strength of Cylindrical Concrete Specimens	ASTM C496	\$253.00	
Static Modulus of Elasticity and Poisson's Ratio of Concrete in Compression	ASTM C469	\$215.00	
Grab Sample, Sealing and Storing in a Humidity and Temperature Controlled Room	CBC	\$150.00	
Density of Hydraulic Cement	ASTM C188	\$195.00	
Testing of Controlled Low Strength Material (CLSM) Test Cylinders	ASTM D4832	\$150.00	
GFRC Pull Test	PCI	\$374.00	
GFRC Flexural Test	PCI	\$374.00	
Foaming Agents for Use in Producing Cellular Concrete Using Preformed Foam (Cell-Crete)	ASTM C796	\$525.00	
MASONRY			
Compressive Testing of Grout (Masonry)	ASTM C1019	\$121.00	
Compressive Strength of Hydraulic Cement Mortars Using 2" Cube Specimens	ASTM C109	\$121.00	
Compressive Strength of Masonry Prisms	ASTM C1314	\$187.00	
Testing Concrete Masonry Units and Related Units (Core Compression)	CBC 2105A.4	\$187.00	
Compressive Strength of Molded Masonry Mortar Cylinders and Cubes (2" Sample)	ASTM C780 A7.6	\$121.00	
Testing Concrete Masonry Units (CMU) and Related Units (Full Unit)	ASTM C140	\$184.00	
Linear Drying Shrinkage of Concrete Masonry Units (Per Unit)	ASTM C426	\$270.00	
Masonry Core Shear Testing	CBC 2105A.4	\$270.00	
Testing Concrete Masonry Units (Absorption, Moisture Content, Unit Weight)	ASTM C140	\$340.00	
Brick and Clay Tile (modulus of rupture, compression, saturation coefficient, suction rate, efflorescence)*	ASTM C67	\$1,000.00	
Mortar Molds. 2" x 4". Single Use		\$121.00	
Mortar or Grout, Stored and Cured, Not Tested (Including Mold)		\$121.00	
AGGREGATES (SOILS AND CONCRETE)			
Determining Sieve Analysis of Fine and Coarse Aggregates (Coarse Only)	CT202/ASTM C136	\$229.00	\$150.00
Sieve Analysis of Fine and Coarse Aggregates (Fine Only)	CT202/ASTM C136	\$296.00	\$200.00
Sieve Analysis of Fine and Coarse Aggregates (Wash Included)	CT202/ASTM C117	\$379.00	\$225.00
Sieve Analysis of Fine and Coarse Aggregates (200 Wash Only)	ASTM C117/D1140	\$229.00	\$150.00
Standard Test Methods for Particle-Size Distribution (Gradation) of Soils Using Sieve Analysis	ASTM D6913	\$350.00	
Evaluating Cleanness of Coarse Aggregate	CT227	\$370.00	
Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate	ASTM C88/CT214	\$275.00	
Unit Weight of Aggregate	CT212	\$158.00	
Clay Lumps and Friable Particles in Aggregates	ASTM C142	\$215.00	
Flat Particles, Elongated Particles or Flat and Elongated Particles in Coarse Aggregate	ASTM D4791/CT235	\$370.00	
Organic Impurities in Fine Aggregates for Concrete	CT213/ASTM C40	\$336.00	
Density, Relative Density(Specific Gravity), and Absorption of Coarse Aggregate	ASTM C127/CT206	\$336.00	
Density, Relative Density(Specific Gravity), and Absorption of Fine Aggregate	ASTM C128/CT207	\$336.00	
Standard Test Methods for Specific Gravity of Soil Solids by Water Pycnometer	ASTM D854	\$336.00	
Resistance to Degradation of Small Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine	ASTM C131(535) and C211	\$535.00	
Percentage of Crushed Particles/Standard Test Method for Determining the Percentage of Fractured Particles in Coarse Aggregate	ASTM D5821/CT205	\$405.00	
Uncompacted Void Content of Fine Aggregate (as Influenced by Particle Shape, Surface Texture, and Grading)	ASTM C1252/AASHTO T304A	\$405.00	
Sand Equivalent Value of Soils and Fine Aggregate	ASTM D2419/CT217	\$279.00	\$195.00
Durability Index (Fine)	ASTM D3744/CT229	\$405.00	
Durability Index (Coarse)	ASTM D3744/CT229	\$405.00	
Durability Index (Fine and Coarse)	ASTM D 3744/CT229	\$405.00	
Lightweight Particles in Aggregate	ASTM C123/AASHTO T113	QOR	
Resistance of Rock to Wetting and Drying	CRD-C169	\$590.00	

*Unusual sample preparation for brick specimen will be charged at the established hourly rate.


SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS

SOILS		Standard Rate/Each	Discounted Rate/Each
Direct Shear Test of Soils Under Consolidated Drained Conditions	ASTM D3080	\$535.00	
Consolidated Undrained Triaxial Compression Test for Cohesive Soils (per point)	ASTM D4767	\$1,000.00	
Consolidated Undrained Triaxial Compression Test for Cohesive Soils (added points)	ASTM D4767	\$200.00	
Consolidated Undrained Triaxial Compression Test for Cohesive Soils (single point)	ASTM D4767	\$325.00	
One-Dimensional Consolidation Properties of Soils Using Incremental Loading	ASTM D2435	\$300.00	
Caltrans Corrosivity Package		\$505.00	
Determining Field and Laboratory Resistivity and pH Measurements for Soil and Water	CT643	QOR	
Soils and Waters for Sulfate Content	CT417	QOR	
Soils and Waters for Chloride Content	CT422	QOR	
Particle-Size Analysis of Soils (with Hydrometer)	ASTM D422	\$590.00	
Pore Water Extraction and Determination of the Soluble Salt Content of Soils by Refractometer	ASTM D4542	\$625.00	
Standard Test Method for Particle-Size Analysis of Soils (without Hydrometer)	ASTM D422	\$535.00	
Liquid Limit, Plastic Limit, and Plasticity Index of Soils	ASTM D4318/CT204	\$535.00	\$225.00
Laboratory Compaction Characteristics of Soil Using Modified/Standard Effort	ASTM D1557/D698	\$502.00	\$250.00
Hydrometer Only	ASTM D422	\$535.00	
pH of Soils	ASTM D4972	\$467.00	
Relative Compaction of Untreated and Treated Soils and Aggregates	CT216	\$590.00	
Determining the Resistance "R" Value of Treated and Untreated Bases, Subbases, and Basement		\$590.00	\$275.00
Soils by the Stabilometer	ASTM D2844/CT301		
Laboratory Determination of Water(*moisture) Content of Soil and Rock by Mass	ASTM D2216/CT226	\$150.00	
Density of Soil in Place by the Drive-Cylinder Method	D2937	\$116.00	
Expansion Index of Soils	ASTM D4829	\$405.00	
Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter (Permeability)		\$550.00	
Lab Compaction Characteristics of Soil 1 Point Proctor (Check Point)	ASTM D5084/CT220		
Maximum Index Density and Unit Weight of Soils Using a Vibratory Table	ASTM D698/D1557	\$337.00	
Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density	ASTM D4253	\$285.00	
Density of Hydraulic Cement	ASTM D4254	\$285.00	
Volatile Organic Content	ASTM C188	\$253.00	
Semi Volatile Organics by GC/Ms (Basic Target List)	EPA 8260B	QOR	
Total Organic Carbon	EPA 8270C	QOR	
ICP Metals Concentration	ASTM 2974/EPA 5310Bm	QOR	
Total Extractable Petroleum Hydrocarbons: TPH, MTBE, Benzene, Toluene, Ethylbenzene, Zylenes,	EPA 6020 - CAM/CCR 17	QOR	
%SS		QOR	
ICP Metals Concentration	EPA 8015B	QOR	
pH	EPA 6020	QOR	
Sequential Batch Extraction of Waste with Acidic Extraction Fluid	EPA 9045D	\$535.00	
Chromium Soluble	ASTM D5284	QOR	
Moisture, Ash and Organic Matter of Peat and Other Organic Soils (Organic Content)	EPA 7196A	QOR	
Universal Soil Classification System (USCS) Test	ASTM D2974	\$270.00	
California Bearing Ratio Test	ASTM D2487	\$300.00	
Unconfined Compressive Strength of Cohesive Soil	ASTM D1883	\$370.00	
	ASTM D2166/CT221	\$187.00	
ASPHALT			
Quantitative Extraction of Bitumen from Bituminous Paving Mixtures (Solvent)	ASTM D2172/CT310	\$732.00	
Determining Low Temperature Performance Grade (PG) of Asphalt Binders	ASTM 6816	QOR	
Thickness/Height of Compacted Bituminous Paving Mixture Specimens (Cores)	ASTM D3549/CT308	\$270.00	\$100.00
Method of Prep of Bituminous Mixture Test Specimens	ASTM D6926/CT304	\$270.00	
Bulk Specific Gravity and Density of Compacted Bituminous Mixtures (LTMD)	ASTM D1188 and D2726/CT308	\$990.00	\$325.00
Indirect Tensile (IDT) Strength of Bituminous Mixtures (TSR)	ASTM D6931/CT371	\$3,146.00	
Mechanical Size Analysis (Coarse and Fine) of Extracted Aggregate	ASTM D5444/CT202	\$405.00	
Marshall Stability and Flow of Bituminous Mixtures	ASTM D6927	\$990.00	
Theoretical Maximum Specific Gravity and Density (Rice)	ASTM D2041/CT309	\$405.00	\$200.00
Measuring the Permeability of Bituminous Pavements and Seal Coats	CT341	QOR	
Swell of Bituminous Mixtures	CT305	\$370.00	
Moisture Vapor Susceptibility of Bituminous Mixtures/Moisture or Volatile Distillates in Asphalt		\$830.00	
Stabilometer Value (1 sample)	ASTM D1461/CT307		
Determination of Asphalt Content of Bituminous Paving Mixtures by the Ignition Method	CT366	\$370.00	
Determination of Correction Factor of Bituminous Paving Mixtures by the Ignition Method	CT382/ASTM D6307	\$405.00	
Determination of Asphalt and Moisture Contents of Bituminous Mixtures by Microwave Oven	CT382/ASTM D6307	\$405.00	
Effect of Water on Compressive Strength of Compacted Bituminous Mixtures (Set of 6)	CT370	\$405.00	
Compressive Strength of Bituminous Mixtures	ASTM D1075	\$3,330.00	
Hamburg Wheel Track	ASTM D1074	\$270.00	
Moisture Susceptibility	AASHTO T324	\$3,630.00	
	AASHTO T283	\$3,630.00	

* Unusual sample preparation (dried clays, saturated clays, etc.) and all other tests for treated or untreated soils, aggregate subbase and aggregate base will be charged at established rates for laboratory technician.

** Does not include sample preparation or sieve analysis



MATERIALS MECHANICAL TESTS			Standard Rate/Each
Mechanical Testing of Steel Products (General Tensile)	ASTM A370		\$470.00
Fillet Weld Break Test for Qualification (Welding)	AWS B4.0		\$205.00
Tension Testing of Metallic Materials, Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products, (Welding Coupon Tensile)	ASTM E8, B557 and AWS B4.0		\$470.00
Mechanical Testing of Steel Products (Couplers)	ASTM A370		\$460.00
Impact Testing of Miniaturized Charpy V-Notch Specimens, Notched Bar Impact Testing of Metallic Materials	ASTM E2248 and ASTM E23		QOR
Testing, Practices, and Terminology for Chemical Analysis of Steel Products	ASTM A751		\$336.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #3-#8	ASTM A370 and E290		\$370.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #9-#11	ASTM A370 and E290		\$440.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #14+	ASTM A370 and E290		QOR
Mechanical Testing of Steel Products, Standard Specification for Steel Wire, Plain, for Concrete Reinforcement	ASTM A370, A82 and A185		\$440.00
Guided Bend Test for Ductility of Welds, Mechanical Testing of Welds	ASTM E190 and AWS B4.0		\$270.00
Determining the Mechanical Properties of Externally and Internally Threaded Fasteners, Anchor Bolts Only (Tension and Yield)	ASTM F307, F1554 and F606		\$528.00
Rockwell Hardness of Metallic Materials	ASTM E18		\$150.00
Proof Test for Carbon and Alloy Steel (Nuts Only)	ASTM A194 or A563		\$337.00
Radiographic Examination of Metallic Castings/Weldments	ASTM E94, E1030 and E1032		QOR
Macroetching Metals and Alloys	ASTM E340, E381 and AWS		\$337.00
Determining the Mechanical Properties of Externally and Internally Threaded Fasteners, Washers, Direct Tension Indicators, and Rivets (HSB Assemblies)	ASTM F606		\$370.00
Mechanical Testing of Steel Products (Terminators Tensile)	ASTM A370		\$370.00
Strength for Sewn or Bonded Seams of Geotextiles	ASTM D4884		\$336.00
Tearing Strength of Fabrics by the Tongue (Single Rip) Procedure	ASTM D2261		\$336.00
Breaking Strength and Elongation of Textile Fabrics (Grab Test)	ASTM D5034		\$270.00
Tensile Properties of Fiber Reinforced Polymer Matrix Composite Bars	ASTM D3039		\$990.00
Steel Strand, Uncoated Seven-Wire for Prestressed Concrete	ASTM A416 and A1061		\$1,463.00
FIREPROOFING			
Thickness and Density of Sprayed Fire-Resistive Material (SFRM)	ASTM E605		\$270.00
Cohesion/Adhesion of Sprayed Fire-Resistive Materials (Test Kit Only)	ASTM E736		\$77.00
CONTACT INFORMATION			
Headquarters: 2118 Rheem Drive • Pleasanton, CA 94588 • P 925.462.5151 • F 925.462.5183			
Peninsula: One Embarcadero Center, Suite 535 • San Francisco, CA 94111 • P 415.334.4747 • F 415.438.2357			
Oakland: 246 30th Street, Suite 101 • Oakland, CA 94601 • P 510.444.4747 • F 510.835.1825			
San Jose: 2033 Gateway Place, #500 • San Jose, CA 95110 • P 408.573.6992 • F 408.437.1201			
Stockton: 343 East Main Street, #711 • Stockton, CA 95202 • P 209.507.7555 • F 209.507.7554			
Rocklin: 4400 Yankee Hill Road • Rocklin, CA 95677 • P 916.419.4747 • F 916.419.4774			
Las Vegas: 3842 E. Post Road • Las Vegas, NV 89120 • P 702.257.4747 • F 702.257.4718			

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Performance schedules for work to be performed will be determined on a project by project basis and approved by the City Manager's designated project manager prior to work on each specific project commencing.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE PROFESSIONAL SERVICES AGREEMENT WITH NELSON\NYGAARD CONSULTING ASSOCIATES, INC. TO ASSIST WITH CITY'S IMPLEMENTATION OF STATE SENATE BILL 743 (TRANSITION FROM LEVEL-OF-SERVICE (LOS) TO VEHICLE-MILES-TRAVELED (VMT) METRIC FOR TRANSPORTATION ANALYSIS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA))

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the professional services agreement with Nelson\Nygaard Consulting Associates, Inc. for assistance with City's implementation of State Senate Bill 743 (SB 743) for a total not-to-exceed amount of \$110,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

On September 27, 2013, Senate Bill 743 (Steinberg) was signed by then Governor Jerry Brown. This legislation directed the Governor's Office of Planning and Research (OPR) to develop alternative metrics to the use of vehicular "level of service" (LOS) for evaluating transportation impacts under the California Environmental Quality Act (CEQA). Currently, environmental review of transportation impacts under CEQA focuses on the delay that vehicles experience at intersections and on roadway segments, measured by a metric known as "Level of Service" or LOS. Traffic mitigation for increased delay usually involves increasing roadway width or the size of the intersection which may increase vehicle use and emissions and discourage alternative forms of transportation.

Under SB 743, the focus of transportation analysis under CEQA will shift from LOS to "Vehicle Miles Traveled" or VMT projected for proposed development projects. The VMT metric measures the amount and distance people drive by motorized vehicle to a destination. Other relevant considerations include the effects of the project on transit, bicycle and pedestrian modes, and the safety of all travelers.

The shift to VMT will align CEQA analysis more closely with other State goals, most particularly the greenhouse gas emission reduction goals. The shift will also promote

the development of multimodal transportation networks (i.e., networks that serve a variety of users including pedestrians, bicyclists, transit riders and drivers) and diversity of land uses. The City of San José was the first in Santa Clara County to switch to the VMT metric. Oakland, San Francisco, and other California cities have already transitioned to this new metric. The statewide SB 743 implementation date is July 1, 2020.

City staff from Long Range Planning and Land Development Engineering have been participating since March 2018 in a countywide collaboration with other cities in Santa Clara County and the Valley Transportation Authority (VTA) on the transition from LOS to VMT. The City's implementation of SB 743 will require the assistance of a transportation planning consultant as there is currently no City staff with transportation planning expertise. Staff initially identified three potential transportation consultants. However, two of the consultants appear to pose a conflict of interest as they work on CEQA transportation analysis for private development projects in the City. Staff proposes to contract with the 3rd firm, Nelson\Nygaard Consulting Associates, Inc. (Oakland, CA office) as staff believes that the firm is the most qualified and has current relevant experience. Nelson\Nygaard has long been at the center of the statewide effort to replace LOS as a metric for understanding transportation impacts. The firm helped push for the legislation that triggered this change and shared feedback that helped shape the final guidelines. Nelson\Nygaard worked on SB 743 implementation with the cities of San José and Oakland and is currently working with the cities of Mountain View, Hayward, and Fremont.

The attached agreement (Attachment 1) shows Nelson\Nygaard's scope of work and deliverables along with a proposed timeline. The agreement is for a total not-to-exceed amount of \$110,000 with the term expiring on July 31, 2020.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended contract approval for Nelson\Nygaard Consulting Associates, Inc. to assist with the City's implementation of SB 743. A separate engagement process will be planned for the LOS-to-VMT transition with the development community.

ALTERNATIVE ACTIONS:

City Council could decide not to approve the agreement and have staff solicit a new consultant proposal. However, this will further delay the City's implementation of SB 743 and may result in a failure by the City in meeting the July 1, 2020 statewide implementation date. It may also delay CEQA review of certain projects.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted the Biennial FY 2018-19 & FY 2019-20 Operating Budget which included a one-time funding of \$200,000 within the Special Revenue Fund 207 for Long Range Planning's work program task to implement SB 743.

FISCAL AND RESOURCE IMPACT:

Funds for the agreement are budgeted within the Long-Range Planning Fund (207) and included in the adopted Biennial FY 2018-19 & FY 2019-20 Operating 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 are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The agreements are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

LINKS/ATTACHMENTS:

1. City Standard Consultant Agreement - Nelson Nygaard

**CONSULTANT AGREEMENT
NELSON\NYGAARD CONSULTING ASSOCIATES, INC.**

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

1. **City Authority.** This Agreement is entered into pursuant to 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 July 31, 2020 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be the completion of certain tasks associated with the City's implementation of State Senate Bill 743 which requires transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) metric for transportation analysis under the California Environmental Quality Act (CEQA) as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$110,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed \$110,000.00 dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation

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

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

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

7.1. **Insurance Types and Amounts.**

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

Meghan Weir, Senior Associate
Nelson\Nygaard Consulting Associates
1629 Telegraph Avenue, Suite 400
Oakland, CA 94612

Address of CITY is as follows:

Maria Angeles	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:

 City Attorney

 By:

 Donald A. Larkin
 Print Name

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

Date: _____

Date: _____

 By:

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

Date: _____

EXHIBIT A SCOPE OF SERVICES

Task 0: Project Management

This task covers CONSULTANT'S ongoing project management, including ongoing check-ins with City staff. An exact check-in schedule will be determined at the outset of the project, but it could include bi-weekly phone check-ins and additional phone meetings if necessary.

Task 1: Project Initiation and Existing Policies Summary

CONSULTANT will meet with City staff for a kick-off meeting and to confirm scope and approach. City staff will provide a consolidated list of key background documents and reference sources to support initial review and analysis of existing policies.

CONSULTANT will review relevant documents and background materials, including the city's General Plan, definition of assumptions about the Valley Transportation Authority's (VTA) vehicle miles traveled (VMT) estimation tool, existing conditions of approval (COA), existing guidelines for transportation impact analysis (TIA) and transportation impact fee (TIF) programs, and any other documents outlining city policies and transportation goals, such as the Bikeways, Trails, Parks And Recreation Master Plan.

Deliverable: Existing Policies summary will support elements of Task 3 memo.

Task 2: Interviews with City Staff from Relevant Agencies

To get a holistic understanding of how the transportation-impact-review process plays out in Morgan Hill today, CONSULTANT will conduct interviews with staff members from each city department and other government agencies that play a substantive role in the city's environmental review process, including the City Attorney's office and Valley Transportation Authority. This approach will illuminate the City's analysis needs for both CEQA and non-CEQA metrics, to inform the framework for CEQA review guidelines, legal structure for updating CEQA and review guideline policy documents, and to translate LOS project results into specific conditions of approval outside of CEQA. The budget for this task assumes up to six in-person group interviews, scheduled over the course of one day to minimize transportation time and costs.

Deliverable: Summary of interview input/feedback for Task 3 memo

Task 3: Review of Analysis Tools and Case Studies

CONSULTANT will review VMT analysis tools and available VMT data, and will analyze a small, representative sample of past environmental impact reports for patterns in findings, mitigations, and public comments. CONSULTANT will count on City staff to identify instructive EIRs, policies, and other relevant documents.

CONSULTANT will work with City staff and review stakeholder interview notes to identify the topic areas that are most likely to address local policy and analysis concerns and will summarize relevant best practices in the Task 3 memo. These may include CEQA reform, Transportation Impact Fee programs, non-congestion metrics, and citywide transportation demand management (TDM) or commute trip reduction laws.

CONSULTANT will submit a draft memo, and will respond to one set of consolidated, non-conflicting comments to revise and produce a final memo.

Deliverable: Draft and Final Technical Memo summarizing findings from Tasks 1, 2, and 3, including summaries and observations on:

- *Stakeholder interview input and local analysis needs*
- *Morgan Hill's existing legal framework, supporting policies and programs, and engagement needs*
- *Existing transportation review process, VMT analysis tools, data review and best practices*

Task 4: Defining Goals, Objectives, and VMT Threshold of Significance

CONSULTANT will use the policy guidance and stakeholder input gleaned through the first three tasks and translate them into a limited number of action-oriented goals and measurable objectives that speak to the type of transportation system Morgan Hill aspires to create over the coming decades.

The goals and objectives will create a foundation for defining performance metrics that meaningfully measure development and transportation projects' effects on the city's transportation system in a way that is aligned to the city's broader goals. These can become part of the City's specific conditions of approval, and will likely include LOS as a non-CEQA metric.

CONSULTANT will work with the City and VTA to apply relevant VMT models to Morgan Hill to define the local threshold of significance for the City's CEQA analysis.

The goals, objectives and threshold of significance definitions identified in this task will inform the new transportation impact review guidelines, which will define local conditions of approval, and will define the significance criteria for CEQA review. CONSULTANT will submit a draft memo, and will respond to one set of consolidated, non-conflicting comments to revise and produce a final memo.

CONSULTANT will submit a draft memo to present a synthesis of Task 4 findings, which will inform the Task 5 draft and final revised guidelines.

Deliverable: Draft Technical Memo summarizing findings from Task 4, including:

- *Transportation goals and objectives*
- *Performance metrics and threshold of significance*

Task 5: Revise or Develop Supporting Analysis Tools

CONSULTANT will coordinate directly with City staff to review the Task 4 draft summaries and confirm needs for revised CEQA analysis guidelines, revised TIA guidelines, and VMT mitigations/TDM programs. Working from existing guidelines and relevant policy language, CONSULTANT will identify elements of the policies that must change to establish compliance with SB 743, and will develop new language and analysis guidelines to support a holistic approach to implementing VMT-based CEQA analysis, while continuing to address local operations analysis needs and effectively mitigate the variety of transportation impacts that may come with new development projects and plans.

CONSULTANT will submit draft policy revisions and guidelines, and will respond to one set of consolidated, non-conflicting comments to revise and produce final products for implementation.

Deliverables: Draft and Final analysis and mitigations guidelines to address the following policy needs:

- *CEQA analysis guidelines for compliance with SB 743*

- *TIA guidelines for all non-CEQA transportation analysis*
- *VMT mitigations approach/TDM programs to support CEQA analysis implementation*

Task 6: Support Adoption

CONSULTANT will work directly with City staff to identify adoption needs and provide presentation support at up to two meetings with Planning Commission or City Council.

Deliverables: Develop meeting materials in support of and attend up to two adoption meetings.

Task 7: Policy-Maker and Stakeholder Support as Needed

CONSULTANT will provide additional support, which may be applied to cover:

- CONSULTANT's staff support in the engagement process, creating audience-specific messaging strategies or outreach materials for meetings
- CONSULTANT's staff time to attend additional meetings

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

HOURLY RATES BY STAFF TITLE

Labor Category	Total Billing Rate
Principal 1-8	\$200 - \$350
Senior Associate 2	\$170.00
Senior Associate 1	\$150.00
Associate 2	\$130.00
Associate 1	\$100.00
Intern	\$70.00
Senior GIS Analyst/Manager	\$140.00
Senior Designer	\$130.00

EXHIBIT C SCHEDULE OF PERFORMANCE

Task	Description	Month 1				Month 2				Month 3			
1	Project Initiation and Existing Policies Summary												
1.1	Kickoff meeting and confirm scope and background sources												
1.2	Review legal framework, existing analysis guidelines, conditions of approval and supporting policies and programs, example EIRs												
2	Interviews with City and Agency Staff												
2.1	Internal stakeholder interviews and documentation												
3	Review of Analysis Tools and Case Studies												
3.1	VMC analysis tools and data review (VTA and MTC models, etc.)												
3.2	Summary of legal framework, supporting policies and programs, engagement needs												
3.3	Summary of transportation analysis best practices (VMC and other TIA analysis)												
4	Defining Goals, Objectives, and VMC Thresholds of Significance												
4.1	Define goals and objectives for transportation system												
4.2	Draft performance metrics informed by goals/objectives (VMC and other TIA needs)												
4.3	Draft thresholds of significance criteria for CEQA review												
4.4	Summary of goals, objectives, draft performance metrics, and draft CEQA thresholds												
5	Revise or Develop Supporting Analysis Tools												
5.1	Draft and final CEQA analysis guidelines												
5.2	Draft and final revised TIA guidelines												
5.3	Draft and final VMC mitigations summary (TDM)												
6	Support Adoption												
6.1	Support presentations to planning commission or council (up to 2 meetings)												
7	Policy-Maker and Stakeholder Support												
7.1	Support policy maker and stakeholder engagement process as needed												

Task	Description	Month 4				Month 5				Month 6			
1	Project Initiation and Existing Policies Summary												
1.1	Kickoff meeting and confirm scope and background sources												
1.2	Review legal framework, existing analysis guidelines, conditions of approval and supporting policies and programs, example EIRs												
2	Interviews with City and Agency Staff												
2.1	Internal stakeholder interviews and documentation												
3	Review of Analysis Tools and Case Studies												
3.1	VMC analysis tools and data review (VTA and MTC models, etc.)												
3.2	Summary of legal framework, supporting policies and programs, engagement needs												
3.3	Summary of transportation analysis best practices (VMC and other TIA analysis)												
4	Defining Goals, Objectives, and VMC Thresholds of Significance												
4.1	Define goals and objectives for transportation system												
4.2	Draft performance metrics informed by goals/objectives (VMC and other TIA needs)												
4.3	Draft thresholds of significance criteria for CEQA review												
4.4	Summary of goals, objectives, draft performance metrics, and draft CEQA thresholds												
5	Revise or Develop Supporting Analysis Tools												
5.1	Draft and final CEQA analysis guidelines												
5.2	Draft and final revised TIA guidelines												
5.3	Draft and final VMC mitigations summary (TDM)												
6	Support Adoption												
6.1	Support presentations to planning commission or council (up to 2 meetings)												
7	Policy-Maker and Stakeholder Support												
7.1	Support policy maker and stakeholder engagement process as needed												

Attachment: City Standard Consultant Agreement - Nelson Nygaard (2579 : PROFESSIONAL SERVICES AGREEMENT WITH

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for PROJECT without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of completing the PROJECT.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 6254.21 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than the PROJECT without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the PROJECT.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for PROJECT.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of the SERVICE AGREEMENT shall govern and control.

CITY's GIS Manager is aware of the GIS DATA sharing, and consents to the sharing of the GIS DATA with CONSULTANT for the PROJECT as specified herein.

Pam van der Leeden, City GIS Manager

Date



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Jennie Tucker, Recreation Manager
APPROVED BY: City Manager

APPROVE TWO YEAR PROPERTY LEASE AGREEMENT WITH ADVENT GROUP MINISTRIES AT 535 ALKIRE STREET

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a lease agreement with Advent Group Ministries for the property located at 535 Alkire Street, Suite 150 (also known as The Villas) for the Advent Step Up Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

Advent Group Ministries, a California non-profit has been a tenant of the City owned property located at 17666 Crest Ave (previously known as the Friendly Inn) since 2010. In 2018, following City Council direction, the Boys and Girls Club (BGC) was leased the Friendly Inn and City staff was directed to find alternate locations for the non-profits housed at the facility. At that time, the City terminated the lease with Advent and BGC assumed a temporary sublease to Advent. The agreement was with a mutual understanding this would be temporary as BGC desired the space to expand their programs. Since that time the City staff has been actively looking to find an alternate location for Advent.

The property at 535 Alkire Street, Suite 150 is a 2,100 square foot office space adjacent to the City Council Chambers Building, owned by the City of Morgan Hill, and currently occupied by the Information Technology (IT) Division. The IT Division will be relocating most of their operation to the Police Department building at the end of December. This leaves the space on Alkire (also referred to as the Villas) available for a tenant. As has been previously reported to the Council, the Villas buildings have only limited life left in them so this move for Advent would be temporary. However, there is a possibility that the program could be relocated to the new non-profit center building that will be

constructed in conjunction with the development adjacent to the Community and Cultural Center.

The proposed lease agreement (Attachment 1) is between the City and Advent Group Ministries and would begin in January 2020 as a two-year lease, with the option to renew for four additional one-year terms. Advent would utilize the space for the Advent Step Up Outpatient Program, which provides individualized treatment to youth that builds upon clients' strengths and addresses their needs, that may include physical, emotional, spiritual, social, or a unique combination of them all.

COMMUNITY ENGAGEMENT: Not Applicable

No community engagement was performed, as City staff worked directly with Advent Group Ministries on the lease agreement. The action is in follow-up to previous Council direction, which came after ongoing discussions and had basis rooted in the Bikeways, Trails, Parks and Recreation Master Plan.

ALTERNATIVE ACTIONS:

The City Council could choose not to move forward with the recommended lease agreement and/or provide recommendations for alternative use of the space.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council last approved a lease agreement with Advent Group Ministries at the Friendly Inn in 2016. On October 4 and 17, 2017 the City Council provided direction on future use of the Friendly Inn. The lease with BGC was approved by Council on February 7, 2018.

FISCAL AND RESOURCE IMPACT:

The new lease agreement will result in \$12,000 per year in rent revenue, adjusted thereafter by CPI, to be deposited into the General Fund (GL# 010.37416).

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. Lease Agreement for Advent Group Ministries

**LEASE AGREEMENT
BETWEEN THE CITY OF MORGAN HILL AND
ADVENT GROUP MINISTRIES**

This LEASE AGREEMENT ("Agreement") between the City of Morgan Hill, a municipal corporation ("CITY"), and Advent Group Ministries, a California non-profit corporation ("TENANT"), sets forth the respective roles of CITY and TENANT in regard to the lease of City-owned Premises known as The Villas, Suite 150, as further described in Exhibit A, is made and entered into as of _____, 2019. Throughout this Agreement, CITY and TENANT are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the City Council approval on _____.
2. TENANT desires to lease a portion of land owned or controlled by CITY as listed below.

In consideration of CITY leasing the Premises to TENANT, TENANT leasing the Premises from CITY, and the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

1. TERM

The Initial Term of this Agreement is effective from noon on January 2, 2020 ("Lease Commencement Date") to noon on January 1, 2022 ("Termination Date"). This Agreement may be renewed by mutual consent of the Parties on the same terms and conditions for four additional subsequent one-year terms ("Extended Term") upon TENANT giving 60 days' notice before the expiration of the term of this Agreement. Monthly Rent (as defined below) for each Extended Term shall be the amounts specified in Section 3. CITY'S City Manager is authorized to extend the term of this Agreement upon the same terms and conditions contained herein.

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

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

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

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

2. PROPERTY USE

2.1. The Premises. The Parties hereto acknowledge that CITY is the owner of the Villas located at 535 Alkire Street, Morgan Hill, CA 95037. Tenant desires to lease Suite 150 of the Villas ("Premises"). The Premises are further described in **Exhibit A**.

2.2. Permitted Use. CITY agrees to permit TENANT to use the Premises for the purpose of the Advent Step Up Outpatient Program, which provides individualized treatment to youth that builds upon clients' strengths and addresses their needs, that may include physical, emotional, spiritual, social, or a unique combination of them all ("Program"), for the purposes, in the locations and manner, and subject to the terms and conditions described in this Agreement. TENANT shall not use or permit the Premises to be used for any other purpose without CITY'S prior written consent, which consent may be granted or withheld in CITY'S sole discretion.

2.2.1 TENANT shall have the non-exclusive right to use the public parking.

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

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

2.4. Maintenance, Repairs, and Alterations. CITY shall maintain all exterior landscaping, building exterior, and be responsible for maintenance of and repairs to the HVAC system, in reasonably good order and condition so as to meet the reasonable needs of TENANT, except for damage, excluding normal wear and tear, caused by TENANT. Damage caused by TENANT shall be repaired by TENANT

at TENANT's expense. The standard of maintenance shall be equal to that of other CITY office buildings of a similar class in Morgan Hill. TENANT shall promptly notify CITY of any damage or service needs that may significantly interfere with the normal use of the premises.

2.4.1 TENANT shall, at its own cost, keep and maintain the interior of the Premises, including, but not limited to, all fixtures, in good repair and lawful condition. TENANT shall be responsible for all janitorial services for the Premises. CITY shall perform maintenance inspections of interior of site on at least a quarterly basis. TENANT shall be responsible to address deficiencies outlined in the inspection reports in a timely manner. If after thirty (30) days written notice from CITY, TENANT has failed to commence and diligently pursue completion of any and all maintenance, replacement, and repair which may be required to restore the Premises and any of its fixtures, equipment, and mechanical systems as a result of the neglect of or loss or damage caused by TENANT or any of its officers, employees, agents, invitees, or licensees or which otherwise results from TENANT's use or occupancy of the Premises, then CITY shall have the right, but not the duty, to perform such maintenance, replacement, and repair at TENANT's expense and TENANT shall reimburse CITY for such costs promptly upon CITY's written demand. The performance of maintenance and repair by CITY shall, in no event, be construed as a waiver of TENANT's duty to maintain and repair as herein provided. Unless CITY's written approval has been first obtained in each instance, TENANT shall not alter the point of supply of any utilities. TENANT shall indemnify, defend, and hold harmless CITY against all actions, claims, and damages by reason of TENANT's failure to comply with and perform the provisions of this section.

2.4.2 Alterations. TENANT may make no alterations, additions or improvements to the Premises without prior written permission of CITY. Improvements must be approved by CITY'S Public Services Director. All required permit fees (Building Permits) are responsibility of TENANT. TENANT shall pay for all labor done and materials furnished in any repairs or any permitted alterations, additions, or improvements to the Premises. CITY may require Tenant to provide CITY, at Tenant's expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure CITY against any liability for mechanics' and materialmen's liens and to insure completion of the work. Upon TENANT's completion of any improvements within the Premises, TENANT shall furnish to CITY a set of reproducible, final "as built" drawings of any and all such alterations, additions, or improvements. TENANT waives the right to make repairs at the expense of CITY or, in lieu thereof, to vacate the Premises, and waives the benefit of the provisions of Paragraph 1941 and 1942 of the California Civil Code or any successor statute thereto and any other similar law now or hereafter in effect. Should TENANT make any alterations, improvements, OR additions without the prior written approval of CITY, CITY may, at any time during the Term of this AGREEMENT, require that TENANT remove any or all of the same.

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

be due and payable ten (10) days after CITY's written demand for any such payments, fees, or costs.

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

2.4.5 Tenant's Property. Any and all property belonging to or brought onto the Premises by TENANT or any of its officers, employees, agents, invitees, or licensees shall be at the sole risk of TENANT. TENANT is hereby advised and understands that the personal property of TENANT, and any of its tenants, is not insured by CITY for either damage or loss, and CITY assumes no liability for such loss. TENANT is advised that, if insurance coverage is desired by Tenant, it is TENANT'S responsibility to obtain said coverage. Subject to CITY's right of approval, TENANT may place and install trade fixtures and other personal property in the Premises for use in connection with its operations hereunder and the same shall be and remain the property of TENANT. TENANT shall, however, be responsible for the cost of repairing any damage to the Premises or any other improvements of CITY which are caused by the removal of any such trade fixtures and personal property. Notwithstanding the foregoing, however, if TENANT shall at any time be in default hereunder, then CITY shall have the benefit of any statutory liens on TENANT's property located in the Premises which are available to CITY under the laws of the State of California and TENANT shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Agreement have been cured.

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

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

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

2.7. End of Term. At the end of the term or upon the earlier termination of this Agreement, TENANT shall deliver to CITY possession of the Premises and all of the fixtures and equipment of CITY in their original condition in all respects, reasonable use and wear excepted. TENANT agrees to

reimburse CITY for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition provided, however, in the event TENANT has caused any alterations, additions, or improvements to be made to the Premises, including, but not limited, to the addition, relocation, or removal of partitions and doorways (which such alterations or improvements shall be made at TENANT's cost and only with the prior express written approval of CITY in each instance), CITY may elect, with respect to each such alteration, addition, or improvement, to accept it as it was at the time it was made or constructed, reasonable use and wear excepted, or to require the same to be restored to its original condition at TENANT's expense.

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

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

2.10. City's Reserved Rights

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

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

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

3. FEES AND CHARGES

3.1. Monthly Rent. As consideration for TENANT's use of Premises pursuant to the terms and conditions of this Agreement, TENANT agrees to pay to CITY ONE THOUSAND AND NO/100 DOLLARS (\$1000.00) by the 10th of every month during the Initial Term of this Agreement ("Monthly Rent"). After the Initial Term of this Agreement, the Monthly Rent payable by TENANT shall be increased on each anniversary of the Lease Commencement Date to reflect any increase in the cost of living, which adjustment shall be determined based on the annual Consumer Price Index for All Urban Consumers San Francisco Area all items index (CPI-U) immediately preceding such anniversary of the Lease Commencement Date.

3.2 Building Service Charges. CITY shall pay the following Building Service Charges: alarm system, HVAC, exterminator, fire protection systems maintenance, fire extinguishers, PG&E, wastewater, and water. TENANT shall be responsible for obtaining and paying for any other utilities (including, without limitation, telephone, cable, and wireless internet service) as is necessary for TENANT'S use of the Premises.

3.3 Taxable Possessory Interest. The property interest created by this Agreement may be subject to property taxation, and TENANT, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on the interest.

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

4.1. Insurance Types and Amounts.

4.1.1. Commercial General Liability (CGL). TENANT shall maintain CGL against claims and liabilities for personal injury, death, and property damage 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 TENANT under TENANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

4.1.2. Automobile Liability. TENANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if TENANT does not own automobiles, then TENANT 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 TENANT under TENANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

4.1.4. Property. TENANT shall maintain Property Insurance to cover TENANT's personal property, including furniture and fixtures, at an amount equal to the full replacement cost of such property. Such coverage shall include protection against fire, theft, vandalism, sprinkler leakage, malicious activity, and all other forms of loss ("all-risk" coverage). TENANT may elect to self-insure TENANT's personal property by written notice given to CITY.

4.1.5. Other Liability Insurance. Because TENANT's activity outlined in Section 2 (Permitted Use) involves contact with minors, TENANT 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 TENANT under TENANT combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

4.2.1. General Liability.

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

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

4.2.1.3. insurance shall be primary non-contributing.

4.2.2. Workers Compensation.

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

4.3. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the

State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

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

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

5. INDEMNIFICATION

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

6. DEFAULT

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

7. ACCESS DISCLOSURE

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

8. WAIVER

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

9. AMENDMENTS

This Agreement may be amended only by an instrument in writing executed by both Parties.

10. ASSIGNMENT AND SUBLETTING

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

11. SUCCESSORS AND ASSIGNS.

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

12. NOTICES

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

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

Copies to: City Attorney
 City of Morgan Hill

17575 Peak Avenue
Morgan Hill, CA 95037

For TENANT: Advent Group Ministries, Inc.
90 Great Oaks Blvd. Ste. 108
San Jose, CA 95119

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

13. SEVERABILITY

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

14. JURISDICTION; GOVERNING LAW

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

15. ENTIRE AGREEMENT

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

16. COUNTERPARTS

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

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17. SIGNATURES

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

ADVENT GROUP MINISTRIES

 City Attorney

By: _____

 Donald A. Larkin

 Print Name

Date: _____

 DANIEL MAHAN, EXEC. DIRECTOR

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

12/6/19

By: _____

 GARY L. WIMP, SECRETARY

Print Name and Title of Signer.

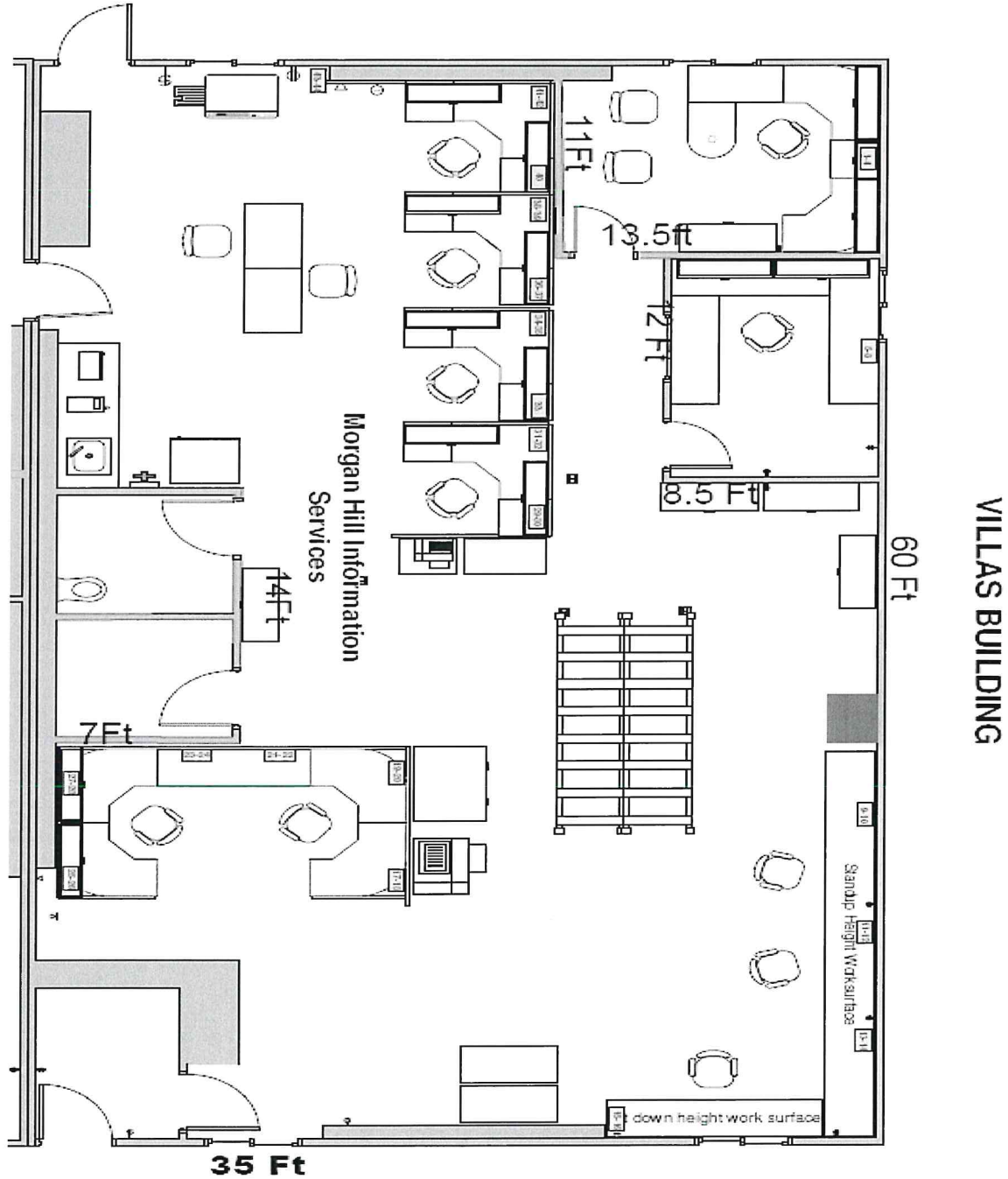
If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: _____

12/10/19

Exhibit A

Premises are located at 535 Alkire Street, Suite 150, Morgan Hill, California 95037



Total 2,100sqft



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

APPROVE APPLICATION TO BAY AREA METRO FOR A NEW PRIORITY PRODUCTION AREA AND A MODIFIED PRIORITY DEVELOPMENT AREA

RECOMMENDATION(S)

1. Adopt resolution designating two industrial areas as illustrated in Exhibit 1 of the Resolution as a Priority Production Area (PPA) for the City of Morgan Hill;
2. Adopt resolution expanding the City of Morgan Hill's existing Priority Development Area (PDA) beyond Downtown as illustrated in Exhibit 1 of the Resolution; and
3. Authorize the City Manager to take all necessary ministerial actions to complete the PPA and or PDA application process and implement the provisions of the Resolution.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development
Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan

POLICY CONSIDERATIONS:

Should the City of Morgan Hill pursue a new Priority Production Area designation that further strengthens industrial preservation and could lead to future funding opportunities for technical assistance and planning grants?

Should the City of Morgan Hill modify its current Priority Development Area designation that supports housing development within ¼ mile of transit and could lead to additional funding opportunities for technical assistance and planning grants?

REPORT NARRATIVE:

Plan Bay Area 2050 is a long-range plan charting the course for the future of the nine-county San Francisco Bay Area. Plan Bay Area 2050 will focus on four key issues—the economy, environment, housing, and transportation—and will identify a path to make the Bay Area more equitable for all residents and more resilient in the face of

unexpected challenges. An element within the Plan Bay Area 2050 is the Economy. Some of the core questions within the Economy Element include; where should we prioritize job growth and what strategies are required to support job growth?

The Regional Growth Framework – comprised of Priority Development Areas, Priority Conservation Areas and Priority Production Areas (a newly-established pilot) – is the Bay Area’s strategy for coordinating housing and job growth to achieve shared goals. The Regional Growth Framework will shape the investments and growth pattern detailed in the upcoming Plan Bay Area 2050.

On June 17, 2019, the Association of Bay Area Governments/Metropolitan Transportation Commission (collectively known as Bay Area Metro) opened a call for letters of interest (LOI) for new or modified Priority Development Areas and Priority Conservation Areas, as well as a new pilot for Priority Production Areas.

Priority Production Area (PPA)

On August 30, 2019, the City of Morgan Hill submitted a letter of interest to the Bay Area Metro regarding the desire to participate in the Pilot Production Area program (See Attachment 1 for City’s submission). A Priority Production Area (PPA) is a geographic area(s) that local jurisdictions deem appropriate for job generating uses associated with industrial development including advanced manufacturing, production, distribution, and auto repair. Throughout the Bay Area, as development pressures for office and residential development increases, greater pressure exists to convert industrial designated land. Approved Pilot Production Areas will be identified in Plan Bay Area 2050 which could help position PPAs for future planning and investments. The City of Morgan Hill views the PPA as an additional planning tool to strengthen community industrial preservation and conversion policies.

A designated Pilot Production Area is intended to:

- Support strong clusters of the region’s economy by enhancing and protecting selected industrial areas through supportive resources and implementation actions.
- Encourage middle-wage job growth close to affordable housing.
- Support networks of production, distribution, and repair services, including advanced manufacturing

Morgan Hill’s proposed Priority Production Area.

City staff proposed two geographic areas within City limits to be classified as a Priority Production Area. Attachment 2 shows the two geographic areas represented as the proposed PPA.

Statistics on the Morgan Hill’s proposed priority production areas:

- 797 acres of land represented in the proposed Morgan Hill PPA
- 84% of the land is designated for industrial uses.
- Total existing jobs within the proposed PPA are 7,900 of which 47% are specifically associated with manufacturing and distribution industries.

- Types of businesses within the PPA include medical device manufacturers, machine shops, sheet metal fabrication, telecommunication instruments/satellites manufacturing, food manufacturing and processing, warehouse and distribution, wood product and fabrication and consumer product manufacturing.

On November 1, 2019, Bay Area Metro notified the City of Morgan Hill that the letter of interest (Attachment 1) in a Priority Production Area for Morgan Hill met the eligibility criteria and the next step is to have a Council resolution nominating the Priority Production Area.

Priority Development Area (PDA)

The City of Morgan Hill proposed a Priority Development Area (PDA) in 2008 as part of Bay Area Plan 2040. The area approved and designated as a PDA is the Downtown Morgan Hill Specific Plan Area. The purpose of designating of a Priority Development Area is to focus both on housing and job growth within a quarter mile of transit. With the Caltrain Station located in Downtown, a PDA designation was most ideal.

The Priority Development Area designation in Morgan Hill has allowed the City to secure financing for proposed projects.

As part of the Plan Bay Area 2050, the City of Morgan Hill submitted a letter of interest (Attachment 3) to expand the City's existing PDA from Downtown Morgan Hill to the Monterey Corridor to the north and south of Downtown (Attachment 4).

A PPA/PDA designation expresses a local government's priorities for growth in jobs and housing and informs regional agencies that jurisdictions want and need assistance, specifically to complete planning actions that will provide for and foster quality design adjacent to transportation.

Next Steps

All jurisdictions need to submit to Plan Bay Area their resolutions for Priority Production Areas (PPA) and Priority Development Areas (PDA) by January 15, 2020. The PPAs and PDAs will then be included in the Draft Blueprint. Work will continue with developing the framework and implementation plan into the Draft Blueprint. In summer 2020, the MTC Commission and ABAG Executive Board will be asked to approve the Final Blueprint as the Preferred Alternative for environmental analysis purposes. During the period of Summer 2020 to Summer 2021, the plan and environmental analysis will be completed.

Adoption of Plan Bay Area 2050 by both agencies is scheduled for June 2021.

COMMUNITY ENGAGEMENT: Inform

This item is informational. A new designation for Priority Production Area (PPA) and expansion of the Priority Development Area (PDA) could allow the City to pursue planning grant funds to support industrial investment should they become available. Acceptance of future grant funds would require approval by City Council.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 1, 2008, the City Council adopted a Resolution authorizing the City Manager to apply to the Association of Bay Area Governments (ABAG) for a Priority Development Designation for Downtown under the FOCUS Bay Area Program (Plan Bay Area 2040)

In March 2014, City Council approved a resolution amending the City's PDA boundaries and authorizing the City Manager to pursue Metropolitan Transportation Commission/Valley Transit Authority Planning Grants for a Station Area Masterplan and Bike and Pedestrian Masterplan.

FISCAL AND RESOURCE IMPACT:

Approval of a Priority Production Area and a modified Priority Development Area does provide the opportunity for the City to pursue planning grant funds through Bay Area Metro should they become available. The staffing resources associated with the City pursuing a Priority Production Area designation or an expanded Priority Development Area designation are accommodated within the Economic Development team's existing workplan.

It is hoped that both PPA and PDA designations will make Morgan Hill eligible for future regional planning and housing funds to prepare and or complete a Monterey corridor specific plan or industrial preservation and conservation strategy plan.

CEQA (California Environmental Quality Act):

Pursuant to Section 15306 (Information Collection) of the California Environmental Quality Act, the Priority Production Area and Priority Development Area gathers information and is part of a study leading to future projects that will require individual analysis. Consideration of the Priority Production Area and Priority Development Area is not a commitment to a project.

LINKS/ATTACHMENTS:

1. Attachment 1: City of Morgan Hill Letter of Interest PPA
2. Attachment 2: Proposed Priority Production Area Map
3. Attachment 3: City of Morgan Hill Letter of Interest Expanded PDA
4. Attachment 4: Proposed Priority Development Area Modification Map
5. Resolution Priority Production Area
6. Resolution Priority Development Area

Use this form to express jurisdictional interest in establishing a Priority Production Area (PPA) through the PPA Pilot Program.

For other forms, including Priority Development Area (PCAs) or Priority Production Area (PPAs) Letters of Interest, and for Letters of Confirmation for PDA Planning, Transit Service, and VMT-Reduction Policies, go here:
<https://www.planbayarea.org/priority>

City or County:	City of Morgan Hill	Date:	August 27, 2019
PPA Name:	Morgan Hill Priority Production Area	Acres:	797.04
Staff Contact/Title:	John Lang	Economic Development Manger	
Email:	John.Lang@morganhill.ca.gov	Phone:	408.310.4652

Step One: Locate the area you would like to designate a PPA on this map.

Is the proposed PPA:

Within an urbanized area?	☒	Yes	☐	No
Beyond ½ mile of a regional rail station*?	☒	Yes	☐	No
Outside of a PDA	☒	Yes	☐	No
If inside a PDA, is this PDA proposed for re-designation to a PPA?	☐	Yes	☐	No

*Heavy, commuter, or intercity rail, including Caltrain, SMART, ACE, and Amtrak/Capitol Corridor

3: PRIORITIZED FOR INDUSTRIAL USE

Is the PPA:

Zoned for industrial use?	☒	Yes	☐	No
A concentration or cluster of industrial uses or activities engaged in production, manufacturing, distribution, goods movement, or repair?	☒	Yes	☐	No

If the area includes a high concentration of industrial uses, describe the predominant industries:

The 797 acres of land represented by the proposed Morgan Hill PPA, 84% of the land is designated for industrial uses. The remaining balance of land is commercial uses. The total jobs within the proposed PPA are 7,900 of which 47% are specifically associated with manufacturing and distribution industries. The range of firms located in the two zones (polygons) include: medical device manufacturers, machine shops, sheet metal fabrication, telecommunication instruments/satellites manufacturing, food manufacturing and processing, warehouse and distribution firms, wood product and fabrication and consumer product manufacturing.

Describe any industries or key employers at risk of displacement or prioritized for retention:

The industrial areas within Morgan Hill are under increasing pressure to convert to residential. There are 304 acres of vacant land within the two zones that can be considered for infill housing and other less intense uses. As has been demonstrated in neighboring communities, without proper buffering between neighborhoods and light industrial areas with manufacturing, over the long-term there are growing pressures on industry to leave the area, allowing for further conversion.

Describe key industries envisioned for expansion in the PPA: The existing buildings and infrastructure support a range of light industrial uses. Manufacturing, particularly last mile production and distribution are well suited opportunities for Morgan Hill.

4: HOUSING ELEMENT

The jurisdiction has a certified* Housing Element: ☒ Yes ☐ No

If yes, year of most recent Housing Element: 2015

In no, explain status of the Housing Element and anticipated certification:

5: OPTIONAL - REGIONAL SIGNIFICANCE

Please describe the role of the area in sustaining or expanding the Bay Area economy and creating middle-wage jobs, and/or improving jobs/housing balance:

The City of Morgan Hill houses 6.2 million square feet of industrial and R&D development. Over 20% of the workforce in Morgan Hill is associated with computer component manufacturing, sports and recreation manufacturing and food manufacturing.

The City of Morgan Hill being located at the Southern end of Silicon Valley has experienced many of workforce challenges as our neighbors to the north. Numerous businesses in Morgan Hill ranging from retail to high tech are having significant challenges retaining and attracting talent to work. With an unemployment rate a little over 3.5% in Morgan Hill, the demand for labor outpaces the supply. Many positions remain unfilled for many employers. Over Three Quarters of Morgan Hill's labor force leaves Morgan Hill for employment generally to the North of Morgan Hill. Thus, many of the jobs get filled with residents of cities and counties that are to the south and east of Morgan Hill. The City is acutely aware of jobs to employed resident imbalance that exists in Morgan Hill and has proactively adopted an Economic Blueprint which outlines industries the City of Morgan Hill should be focusing on attracting jobs for residents. City Council has additionally approved changes to the Zoning code that allows greater flexibility in uses in many of the zoning districts allowing for business growth. In addition to an updated Zoning Code, City Council has approved impact fee freeze agreements that support new building investment in Morgan Hill. With a strong economy and rising rents, Morgan Hill is seeing significant new investment being planned and developed in Morgan Hill. There is currently over 2 million square feet of industrial building planned for Morgan Hill in the next 24 months. These buildings will allow for future growth of professional office and advanced manufacturing jobs.

Within the Economic Blueprint one of the key initiatives is Support Educational Facilities and a life-long learning ecosystem. The City is focused on connecting educational assets to industry. Examples of this include the City's participation in a manufacturing initiative with work2future, the local workforce investment board, to identify career training programs for select occupations. Working with local community colleges, training programs like welding, blueprint reading are being developed to provide necessary skill sets for folks interested in a manufacturing careers.

6: OPTIONAL - PLANNING

Please describe any adopted, in-progress, or anticipated planning efforts to advance the PPA:

The City of Morgan Hill in 2017 adopted an Economic Blueprint which outlines 4 key industries the City is focused on retaining and expanding. One of the key industries is innovation and advanced manufacturing. The City is in the early stages of developing an industrial land preservation policy to further support current and future jobs in Morgan Hill. With major policy changes occurring at the State of California related to housing development coming forward, additional pressure is already being experienced in conversion of industrial/production lands to housing.

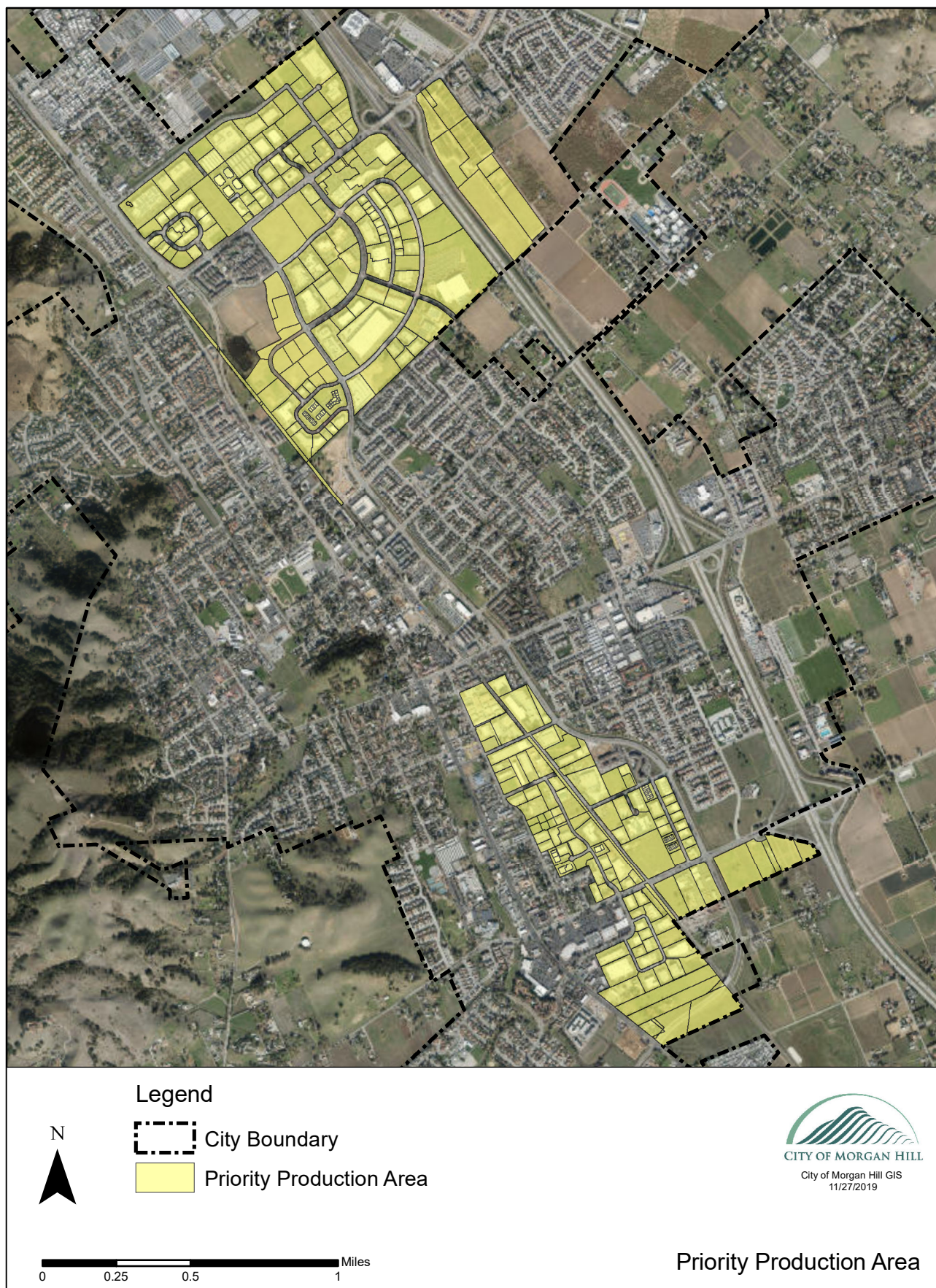
Name & Title: Jennifer Carman, Development Services Director

Signature:



Date:

August 27, 2019



Letter-of-Interest: Priority Development Area

Use this form to express jurisdictional interest in: a) establishing a new PDA; or b) modifying the boundaries of an existing PDA.

Instructions: Complete this form and send it to pdas@bayareametro.gov along with a GIS shapefile of the PDA boundaries, and any additional attachments, by **September 16, 2019**. Forms may be signed by planning directors or city managers/administrators. Following review of this form by MTC/ABAG staff and additional discussion with applicants if needed, City Council or Board of Supervisors resolutions nominating new PDAs will be required by **January 15, 2020**. Resolutions are not required to modify an existing PDA.

For other forms, including Priority Conservation Area (PCA) or Priority Production Area (PPA) Letters of Interest, and for Letters of Confirmation for PDA Planning or VMT-Reduction Policies, go here:

<https://www.planbayarea.org/priority>

1: APPLICATION TYPE

I want to: ☐ Propose a new PDA ☒ Modify an existing PDA

2: PDA DESIGNATION

Step One: Determine the designation for your PDA by reviewing [this map](#). If the area you wish to designate a PDA is not shown as eligible, complete Section 6.

Step Two: Check the appropriate box below:

☒ Transit-Rich ☐ Connected Community/High Resource Area
☐ Connected Community/Outside High Resource Area*

*Also complete VMT-Reduction Letter of Confirmation, available [here](#)

3: GENERAL PDA INFORMATION

City or County	<u>Morgan Hill</u>	Date	<u>9/6/2019</u>
PDA Name	<u>Morgan Hill</u>	Acres	<u>Proposed Expansion is 105 acres (Existing 181 acres)</u>
Staff Contact/Title	<u>John Lang/Economic Development Manager</u>		
Email:	<u>John.Lang@morganhill.ca.gov</u>	Phone	<u>408.310.4652</u>

4: PLANNING STATUS

Level of
Planning
Completed
for PDA

	Adopted		In Progress		None**	
Specific Plan	X	For existing				
Other Plan*			X	Modification Area		
EIR					X	Modification Area
Consistent Zoning	X	Modification Area & Existing Area				

*If "Other Plan" selected, please describe: Working on a developing a scope for a block master plan. Initial work has begun. <https://www.morgan-hill.ca.gov/1727/Monterey-Corridor-BLMP>

Zoning is consistent with the existing PDA area as well as the proposed modification area. The EIR work for the modification area is anticipated to complete no later than 2025.

**If "None" selected, indicate expected start and completion year:

5: LAND USE

Housing &
Jobs

	2017 or most recent	Planned**	"Planned" year
Dwelling Units*	737 (Existing PDA) 425 (Modification Area)	1,190 (Existing PDA) 780 (Modification Area)	2030 (Existing PDA) 2035 (Modification Area)
Jobs*	1,626 (Existing PDA) 433 (Modification Area)	441 (Existing PDA) 1,873 (Modification Area)	2030 (Existing PDA) 2035 (Modification Area)

Except for current job figures, all remaining figures are based upon a 2018 analysis by Lisa Wise Consultant. Current Job figures are based upon QCEW employment figures for Morgan Hill.

**All figures can be estimates*

***Can be based upon buildout in most recently adopted plan, such as the "Project" analyzed in an EIR, or a staff estimate*

6: IF NEEDED - ADDITIONAL TRANSIT INFORMATION

If the majority of land in the PDA is not shown as eligible on the PDA designation map, please **describe existing or planned transit service in the PDA that meets eligibility criteria:**

Mode		Status		Agency & Route/Station		
☐	Rail	☐	Existing	☐	Planned	
☐	Ferry	☐	Existing	☐	Planned	
☐	15 minute bus	☐	Existing	☐	Planned	
☐	30 minute bus	☐	Existing	☐	Planned	

Please attach a map, preferably a GIS shapefile, of the stop location(s) when submitting this form.

7: OPTIONAL - REGIONAL CATALYST SITES

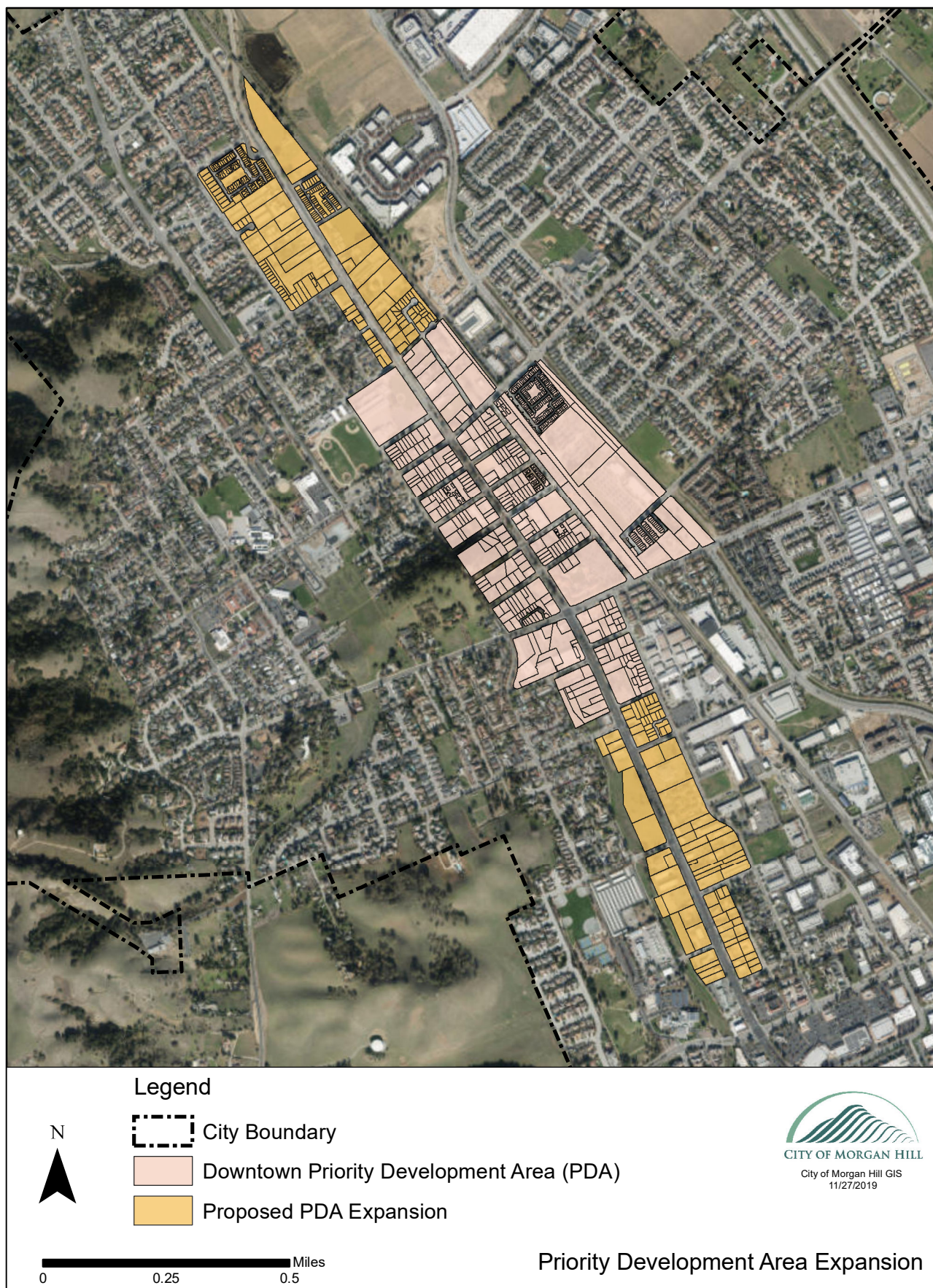
If the PDA includes one or more planned or potential development site with the capacity to provide at least 1,000 new housing units, please describe the site(s) below:

Name	Current Use	Potential Future DU	Potential Future Commercial SF	Approximate % Affordable	Phase

Name & Title: JENNIFER CARMAN, DEVELOPMENT SERVICES DIR.

Signature: 

Date: 9.9.19



Document Path: H:\Projects\EconDevel\GIS\Maps\PriorityAreas_ProductionDevelopment\Priority Development Area Expansion.mxd

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TO NOMINATE A PRIORITY PRODUCTION AREA DESIGNATION TO THE ASSOCIATION OF BAY AREA GOVERNMENTS & METROPOLITAN TRANSPORTATION COMMISSION FOR ADOPTION AS A PRIORITY PRODUCTION AREA AND AUTHORIZING THE CITY MANAGER TO TAKE ALL OTHER MINISTERIAL ACTIONS THAT MAY BE NECESSARY OR APPROPRIATE TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) (collectively, the “regional agencies”) are undertaking a regional planning initiative called, Plan Bay Area 2050 (Plan); and

WHEREAS, the Plan will serve as the Bay Area’s Regional Transportation Plan and Sustainable Communities Strategy, outlining strategies for growth and investment through the year 2050; and

WHEREAS, this Framework includes locally nominated Priority Production Areas (PPAs) as industrial lands that support the vitality of the region’s economy and expand middle-wage job opportunities in industrial sectors; and

WHEREAS, a Priority Production area must meet all the following criteria: (a) within an existing community, (b) zoned for industrial use, (c) have a high concentration of industrial activities such as production, advanced manufacturing, distribution, or related activities; and

WHEREAS, local governments in the nine county San Francisco Bay Area are eligible to apply for designation of an area within their community as a priority production area; and

WHEREAS, the regional agencies are committed to securing incentives and providing technical assistance to designated priority production areas so that middle wage job growth can be retained; and

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

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

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

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

- a. The Proposed Priority Production Area as identified in Exhibit 1 meets the eligibility criteria identified by the Plan; and
- b. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 18th day of December 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 18th Day of December, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK



RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TO NOMINATE A MODIFICATION TO MORGAN HILL'S EXISTING PRIORITY DEVELOPMENT AREA BOUNDARIES UNDER THE PLAN BAY AREA 2050 AND AUTHORIZING THE CITY MANAGER TO TAKE ALL OTHER MINISTERIAL ACTIONS THAT MAY BE NECESSARY OR APPROPRIATE TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION

WHEREAS, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) (collectively, the "regional agencies") are undertaking a regional planning initiative called, Plan Bay Area 2050; and

WHEREAS, Plan Bay Area 2050 program goals support a future regional development pattern that is compact and connected; and

WHEREAS, the regional agencies seek local government partners to create a specific and shared concept of where housing can be accommodated (priority development area) and what areas need protection (priority conservation area) in the region; and

WHEREAS, a priority development area must meet all the following criteria: (a) within an existing community, (b) within a half-mile of frequent transit, (c) planned for future housing and job growth; and

WHEREAS, local governments in the nine county San Francisco Bay Area are eligible to apply for a modification of an area within their community as a priority development area; and

WHEREAS, jurisdictions with priority development areas may have access to future regional funding to support priority development areas; and

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

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

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

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

- a. The proposed modification to Morgan Hill's Priority Development Area as identified in Exhibit 1 meets the eligibility criteria identified by Bay Area Metro; and

- b. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 18th day of December 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 18th Day of December, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Exhibit 1: Morgan Hill Proposed Modification to Priority Development Area Map



Attachment: Resolution Priority Development Area (2536 : Application to Bay Area Metro for a new PPA



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Michael Horta, Senior Human Resources Analyst
APPROVED BY: City Manager

APPROVE PLANS EXAMINER AND PLAN CHECK ENGINEER CLASSIFICATIONS, AND REVISED AFSCME AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULES

RECOMMENDATION(S)

1. Approve the Part-Time Temporary and Seasonal Employees Salary Schedule;
2. Approve the Plans Examiner and Plan Check Engineer classifications and updated American Federation of State, County and Municipal Employees (AFSCME) salary schedule; and
3. Adopt resolution amending the adopted Fiscal Year 2019-20 budget to appropriate \$100,139 from the Development Services Fund (206) for the personnel related expenditures.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship
Infrastructure
Housing

GUIDING DOCUMENTS

Downtown Specific Plan
General Plan/Housing Element
Public Safety Master Plan

REPORT NARRATIVE:

Plans Examiner and Plan Check Engineer Classifications

Development Services' Building Division is requesting the augmentation of staff by adding a Plans Examiner or Plan Check Engineer position. Responding to the impacts of the recession, in 2012, Development Services laid off 10 positions and adopted a staffing model which kept a core of key positions, with the intention of augmenting the Planning, Building and Land Development Engineering need utilizing contract services. Conceptually, the staff could then be adjusted for ebbs and flows in the development cycle. With increasingly tight labor markets, it has now become more difficult to find contract help with compatible skills that can devote the number of hours needed to Morgan Hill alone, and to find cost and time efficiency, with contract services demanding increased oversight.

In 2015, Zucker Systems, conducted an organizational/functional review of Development Services; specifically, the entitlement entities of Development Services

Fund (206), Planning, Building and Land Development Engineering. Among the many recommendations were that the City hire a full-time plan check engineer for both Building and Land Development Engineering. At the time, the City did not feel that those positions could be supported through the Development Services Fund and chose to continue to use contract services and try to cross and “up” train our building personnel to be more flexible and take on more functions including fire code compliance and ADA plan review. Fund 206 is intended to be 100% cost recovery, but in essence has never collected revenues at that level, due in large part to the number of activities performed by Planning, Building and Engineering which are not associated with a permit, which is the payment for service point. So, the City has “made do” with trying to provide the very best services possible along with this core/consultant paradigm.

As the City gears up for implementation of SB 330, the 2019 Housing Crisis Act, it is clear that we will need to augment the Building Team with full time plan check services, and by doing so, allow our skilled team to deploy with greater flexibility to building/fire inspection, specifically allowing the Building Official and Supervising Building inspector less time with plan check functions and more time in the field assisting with the more complex, combined inspections required of our commercial/industrial development. This is an augmentation request, and therefore, some contract services will continue to be used, not eliminated. At present, if the Building Team lost a team member, maintaining service levels would not be possible. This staffing model is not sustainable.

Although the approval is for two classifications, the department is only requesting one additional full time equivalent (FTE) position. The recommended salary ranges (Attachment 1) for both of the classifications are aligned with the Council’s approved employee compensation guiding principles and are competitive with the City’s benchmark agencies. The approval of two classifications provides additional flexibility, and at the time of recruitment, it will be determined which classification is the best fit based upon the quality and response of applicants. The City is seeking a highly qualified individual.

Part-Time Temporary and Seasonal Employees Salary Schedule

The Part-Time Temporary and Seasonal Salary Schedule (Attachment 2) has been updated to align with the increased minimum wage of \$13.00 per hour which takes effect January 1, 2020. No adjustments to the budget are required for this increase as they were known and included in the current biennial budget.

COMMUNITY ENGAGEMENT: INFORM

This report is intended to inform the community. The Human Resources Team will post the approved AFSCME and Part-Time Temporary and Seasonal Employees corresponding salary schedule on the Human Resources website page as is the City’s practice for all salary information. In addition, the recruitment for the new classification will be posted on the City’s website as well.

ALTERNATIVE ACTIONS:

1. Continue to provide building division’s service at the current service level, by not adding additional FTE in Building Division, which includes one less contract building

inspector than one year ago and would increase inspection and plan review times and expectations for building permits. Under SB 330, certain reviews would be required within 60 or 90 days depending upon the level of complexity of the process. Those reviews would become the priority, pushing other projects.

2. Amend the recommended Plans Examiner and Plan Check Engineer salary ranges. This alternative is not recommended as the proposed salaries are aligned with other similar classifications within the Building Division of the AFSCME salary schedule and are competitive for recruitment purposes with our benchmark agencies.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 5, 2018, the City Council approved the current Part-Time Temporary and Seasonal Employees Resolution and corresponding salary schedule.

On July 17, 2019, the City Council approved the revised AFSCME 2019-2021 salary schedules.

FISCAL AND RESOURCE IMPACT:

Building Division FTE: The total cost to the Development Services Fund (206) in the current fiscal year will be \$90,139 (based on 6 months) plus a one-time investment not to exceed \$10,000 for a computer system with significant graphic capacity and two plan review sized screens with arms. Related budget amendment resolution and scorecard, totaling \$100,139, are attached (Attachment 3). At this time, it is expected that processing between 400-500 residential units alone, will create a fund break-even point. So, some combination of units and commercial project review should allow the Fund to be healthier than in the past few years. In addition, the department has taken many actions to reduce costs, including eliminating the Administrative Analyst position 18 months ago when the position became vacant, and utilizing interns and management exchange opportunities when they are available.

Part-Time Temporary and Seasonal Employees Salary Schedule: The fiscal impact to increase salary ranges was known and included in the adopted biennial budget. There is no additional fiscal impact to increase the minimum part-time temporary seasonal employees salaries from the current California minimum wage rate of \$12.00 per hour to California new minimum wage requirement of \$13.00 per hour effective January 1, 2020.

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. AFSCME 2019-2021 Salary Schedule Revised 12.18.19 Plans Examiner and Plans Check Engineer
2. Revised Part-Time Temp. and Seasonal Employees Salary Schedule 12.18.19CC
3. Budget Amendment Resolution

Exhibit A

Effective 12/30/2018 (3.5% increase)												
Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	\$ 6,876	\$ 39.67	\$ 7,219	\$ 41.65	\$ 7,580	\$ 43.73	\$ 7,959	\$ 45.92	\$ 8,358	\$ 48.22	\$ 8,776	\$ 50.63
Accounting Asst. I	4,546	26.23	4,773	27.54	5,013	28.92	5,263	30.36	5,526	31.88	5,802	33.47
Accounting Asst. II	4,758	27.45	4,996	28.82	5,245	30.26	5,507	31.77	5,783	33.36	6,071	35.03
Assistant Planner	6,876	39.67	7,219	41.65	7,580	43.73	7,959	45.92	8,358	48.22	8,776	50.63
Assistant Engineer	7,638	44.07	8,021	46.28	8,423	48.59	8,843	51.02	9,285	53.57	9,750	56.25
Associate Planner	7,401	42.70	7,772	44.84	8,160	47.08	8,568	49.43	8,996	51.90	9,446	54.50
Associate Engineer	8,873	51.19	9,317	53.75	9,783	56.44	10,272	59.26	10,786	62.23	11,325	65.34
Business Assistant	5,269	30.40	5,533	31.92	5,810	33.52	6,100	35.19	6,406	36.96	6,725	38.80
Building Inspector II	7,676	44.28	8,059	46.49	8,461	48.81	8,884	51.26	9,329	53.82	9,795	56.51
Building Inspector Supervisor	9,029	52.09	9,481	54.70	9,955	57.43	10,453	60.30	10,975	63.32	11,524	66.48
Code Compliance Officer	6,952	40.11	7,300	42.11	7,665	44.22	8,048	46.43	8,451	48.75	8,873	51.19
Community Services Coordinator	5,786	33.38	6,076	35.05	6,380	36.81	6,699	38.65	7,034	40.58	7,386	42.61
Council Services Assistant	5,235	30.20	5,496	31.71	5,771	33.30	6,060	34.96	6,363	36.71	6,681	38.54
Custodian	3,504	20.21	3,678	21.22	3,863	22.28	4,056	23.40	4,259	24.57	4,472	25.80
Development Services Technician	6,072	35.03	6,376	36.78	6,694	38.62	7,029	40.55	7,381	42.58	7,750	44.71
Electrician	7,233	41.73	7,595	43.82	7,975	46.01	8,373	48.31	8,792	50.72	9,232	53.26
Engineering Technician I	5,369	30.97	5,637	32.52	5,918	34.14	6,214	35.85	6,525	37.64	6,851	39.52
Engineering Technician II	5,936	34.24	6,233	35.96	6,544	37.76	6,871	39.64	7,215	41.63	7,576	43.71
Environmental Programs Coordinator	6,876	39.67	7,219	41.65	7,580	43.73	7,959	45.92	8,358	48.22	8,776	50.63
Exec. Sec. to the Chief of Police	5,369	30.97	5,637	32.52	5,918	34.14	6,214	35.85	6,525	37.64	6,851	39.52
Facilities Maintenance Specialist	5,786	33.38	6,076	35.05	6,380	36.81	6,699	38.65	7,034	40.58	7,386	42.61
Housing Program Coordinator	7,401	42.70	7,772	44.84	8,160	47.08	8,568	49.43	8,996	51.90	9,446	54.50
Information Services Technician	6,876	39.67	7,219	41.65	7,580	43.73	7,959	45.92	8,358	48.22	8,776	50.63
Junior Engineer	6,876	39.67	7,219	41.65	7,580	43.73	7,959	45.92	8,358	48.22	8,776	50.63
Maintenance Worker I	4,758	27.45	4,996	28.82	5,245	30.26	5,507	31.77	5,783	33.36	6,071	35.03
Maintenance Worker II	5,250	30.29	5,512	31.80	5,788	33.39	6,078	35.06	6,382	36.82	6,701	38.66
Maintenance Supervisor	7,625	43.99	8,006	46.19	8,406	48.50	8,827	50.92	9,267	53.47	9,731	56.14
Management Analyst	7,050	40.68	7,403	42.71	7,774	44.85	8,163	47.09	8,571	49.45	8,999	51.92
Municipal Services Assistant	5,014	28.92	5,264	30.37	5,527	31.89	5,803	33.48	6,093	35.15	6,397	36.91
Office Assistant I	3,616	20.86	3,797	21.91	3,987	23.00	4,187	24.15	4,396	25.36	4,615	26.63
Office Assistant II	4,546	26.23	4,773	27.54	5,013	28.92	5,263	30.36	5,526	31.88	5,802	33.47
Plan Check Engineer (added 12/18/19)	9,029	52.09	9,481	54.70	9,955	57.43	10,453	60.30	10,975	63.32	11,524	66.48
Plans Examiner (added 12/18/19)	7,676	44.28	8,059	46.49	8,461	48.81	8,884	51.26	9,329	53.82	9,795	56.51
Police Analyst	7,775	44.86	8,164	47.10	8,572	49.45	9,000	51.93	9,451	54.52	9,924	57.25
Public Works Inspection Supervisor	9,029	52.09	9,481	54.70	9,955	57.43	10,453	60.30	10,975	63.32	11,524	66.48
Public Works Inspector	7,233	41.73	7,594	43.81	7,974	46.00	8,372	48.30	8,790	50.71	9,230	53.25
Recreation Services Coordinator	5,786	33.38	6,076	35.05	6,380	36.81	6,699	38.65	7,034	40.58	7,386	42.61
Senior Accountant (approved 7/17/19)	7,563	43.63	7,941	45.81	8,338	48.10	8,755	50.51	9,193	53.04	9,653	55.69
Senior Maintenance Worker	5,786	33.38	6,076	35.05	6,380	36.81	6,699	38.65	7,034	40.58	7,386	42.61
Senior Utility Worker	5,786	33.38	6,076	35.05	6,380	36.81	6,699	38.65	7,034	40.58	7,386	42.61
Senior Public Works Inspector	7,775	44.86	8,164	47.10	8,572	49.45	9,000	51.93	9,451	54.52	9,924	57.25
Support Services Supervisor	6,859	39.57	7,202	41.55	7,562	43.63	7,940	45.80	8,337	48.10	8,754	50.50
Utility Worker I	4,758	27.45	4,996	28.82	5,245	30.26	5,507	31.77	5,783	33.36	6,071	35.03
Utility Worker II	5,250	30.29	5,512	31.80	5,788	33.39	6,078	35.06	6,382	36.82	6,701	38.66
Utility Supervisor	7,750	44.71	8,137	46.95	8,544	49.29	8,971	51.76	9,420	54.34	9,891	57.06
Water Quality Specialist	6,391	36.87	6,711	38.72	7,046	40.65	7,398	42.68	7,768	44.81		

Effective 01/01/2020 (3.25% increase)												
Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	\$ 7,099	\$ 40.96	\$ 7,454	\$ 43.00	\$ 7,827	\$ 45.15	\$ 8,218	\$ 47.41	\$ 8,629	\$ 49.78	\$ 9,061	\$ 52.28
Accounting Asst. I	4,693	27.08	4,929	28.43	5,175	29.86	5,434	31.35	5,706	32.92	5,991	34.56
Accounting Asst. II	4,913	28.34	5,158	29.76	5,416	31.25	5,686	32.81	5,970	34.44	6,269	36.17
Assistant Planner	7,099	40.96	7,454	43.00	7,827	45.15	8,218	47.41	8,629	49.78	9,061	52.28
Assistant Engineer	7,887	45.50	8,282	47.78	8,697	50.17	9,130	52.68	9,587	55.31	10,067	58.08
Associate Planner	7,642	44.09	8,024	46.29	8,425	48.61	8,846	51.04	9,289	53.59	9,753	56.27
Associate Engineer	9,162	52.85	9,620	55.50	10,101	58.27	10,606	61.19	11,136	64.25	11,693	67.46
Business Assistant	5,440	31.39	5,713	32.96	5,998	34.61	6,299	36.34	6,614	38.16	6,944	40.06
Building Inspector II	7,925	45.72	8,320	48.00	8,736	50.40	9,173	52.92	9,632	55.57	10,114	58.35
Building Inspector Supervisor	9,323	53.79	9,789	56.47	10,278	59.30	10,792	62.26	11,332	65.38	11,898	68.64
Code Compliance Officer	7,178	41.41	7,537	43.48	7,914	45.66	8,310	47.94	8,726	50.34	9,162	52.85
Community Services Coordinator	5,974	34.46	6,273	36.19	6,587	38.00	6,916	39.90	7,263	41.90	7,626	44.00
Council Services Assistant	5,405	31.18	5,675	32.74	5,959	34.38	6,257	36.10	6,570	37.90	6,898	39.80
Custodian	3,617	20.87	3,798	21.91	3,988	23.01	4,188	24.16	4,397	25.37	4,618	26.64
Development Services Technician	6,270	36.17	6,583	37.98	6,912	39.88	7,257	41.87	7,621	43.96	8,002	46.17
Electrician	7,468	43.08	7,842	45.24	8,234	47.50	8,645	49.88	9,078	52.37	9,532	54.99
Engineering Technician I	5,543	31.98	5,820	33.58	6,110	35.25	6,416	37.02	6,737	38.87	7,073	40.81
Engineering Technician II	6,129	35.36	6,435	37.13	6,757	38.98	7,095	40.93	7,450	42.98	7,822	45.13
Environmental Programs Coordinator	7,099	40.96	7,454	43.00	7,827	45.15	8,218	47.41	8,629	49.78	9,061	52.28
Exec. Sec. to the Chief of Police	5,543	31.98	5,820	33.58	6,110	35.25	6,416	37.02	6,737	38.87	7,073	40.81
Facilities Maintenance Specialist	5,974	34.46	6,273	36.19	6,587	38.00	6,916	39.90	7,263	41.90	7,626	44.00
Housing Program Coordinator	7,642	44.09	8,024	46.29	8,425	48.61	8,846	51.04	9,289	53.59	9,753	56.27
Information Services Technician	7,099	40.96	7,454	43.00	7,827	45.15	8,218	47.41	8,629	49.78	9,061	52.28
Junior Engineer	7,099	40.96	7,454	43.00	7,827	45.15	8,218	47.41	8,629	49.78	9,061	52.28
Maintenance Worker I	4,913	28.34	5,158	29.76	5,416	31.25	5,686	32.81	5,970	34.44	6,269	36.17
Maintenance Worker II	5,420	31.27	5,692	32.84	5,976	34.48	6,275	36.20	6,589	38.01	6,918	39.91
Maintenance Supervisor	7,873	45.42	8,266	47.69	8,680	50.07	9,113	52.58	9,569	55.20	10,047	57.97
Management Analyst	7,280	42.00	7,644	44.10	8,027	46.31	8,428	48.62	8,849	51.05	9,292	53.61
Municipal Services Assistant	5,177	29.86	5,435	31.36	5,707	32.92	5,992	34.57	6,291	36.29	6,605	38.11
Office Assistant I	3,734	21.54	3,921	22.62	4,116	23.75	4,323	24.94	4,539	26.18	4,765	27.49
Office Assistant II	4,693	27.08	4,929	28.43	5,175	29.86	5,434	31.35	5,706	32.92	5,991	34.56
Plan Check Engineer (added 12/18/19)	9,323	53.79	9,789	56.47	10,278	59.30	10,792	62.26	11,332	65.38	11,898	68.64
Plans Examiner (added 12/18/19)	7,925	45.72	8,320	48.00	8,736	50.40	9,173	52.92	9,632	55.57	10,114	58.35
Police Analyst	8,028	46.31	8,429	48.63	8,851	51.06	9,293	53.61	9,758	56.29	10,246	59.11
Public Works Inspection Supervisor	9,323	53.79	9,789	56.47	10,278	59.30	10,792	62.26	11,332	65.38	11,898	68.64
Public Works Inspector	7,468	43.08	7,841	45.23	8,233	47.50	8,644	49.87	9,076	52.36	9,530	54.98
Recreation Services Coordinator	5,974	34.46	6,273	36.19	6,587	38.00	6,916	39.90	7,263	41.90	7,626	44.00
Senior Accountant	7,809	45.05	8,199	47.30	8,609	49.67	9,040	52.15	9,492	54.76	9,967	57.50
Senior Maintenance Worker	5,974	34.46	6,273	36.19	6,587	38.00	6,916	39.90	7,263	41.90	7,626	44.00
Senior Utility Worker	5,974	34.46	6,273	36.19	6,587	38.00	6,916	39.90	7,263	41.90	7,626	44.00
Senior Public Works Inspector	8,028	46.31	8,429	48.63	8,851	51.06	9,293	53.61	9,758	56.29	10,246	59.11
Support Services Supervisor	7,082	40.86	7,436	42.90	7,808	45.04	8,198	47.29	8,608	49.66	9,039	52.15
Utility Worker I	4,913	28.34	5,158	29.76	5,416	31.25	5,686	32.81	5,970	34.44	6,269	36.17
Utility Worker II	5,420	31.27	5,692	32.84	5,976	34.48	6,275	36.20	6,589	38.01	6,918	39.91
Utility Supervisor	8,002	46.17	8,402	48.47	8,822	50.89	9,263	53.44	9,726	56.11	10,212	58.91
Water Quality Specialist	6,599	38.07	6,929	39.98	7,275	41.97	7,639	44.07	8,020	46.27		

Effective 01/01/2021 (3.25% increase)												
Position	A Monthly	A Hourly	B Monthly	B Hourly	C Monthly	C Hourly	D Monthly	D Hourly	E Monthly	E Hourly	F Monthly	F Hourly
Accountant I	\$ 7,330	\$ 42.29	\$ 7,696	\$ 44.40	\$ 8,081	\$ 46.62	\$ 8,485	\$ 48.95	\$ 8,910	\$ 51.40	\$ 9,356	\$ 53.97
Accounting Asst. I	4,846	27.96	5,089	29.36	5,344	30.83	5,611	32.37	5,891	33.99	6,186	35.69
Accounting Asst. II	5,072	29.26	5,326	30.73	5,592	32.26	5,871	33.87	6,164	35.56	6,472	37.34
Assistant Planner	7,330	42.29	7,696	44.40	8,081	46.62	8,485	48.95	8,910	51.40	9,356	53.97
Assistant Engineer	8,143	46.98	8,551	49.33	8,979	51.80	9,427	54.39	9,898	57.11	10,394	59.96
Associate Planner	7,890	45.52	8,285	47.80	8,699	50.19	9,134	52.69	9,591	55.33	10,070	58.10
Associate Engineer	9,459	54.57	9,933	57.30	10,429	60.17	10,951	63.18	11,498	66.34	12,073	69.65
Business Assistant	5,617	32.41	5,899	34.03	6,193	35.73	6,503	37.52	6,829	39.40	7,170	41.36
Building Inspector II	8,183	47.21	8,591	49.56	9,020	52.04	9,471	54.64	9,945	57.37	10,442	60.24
Building Inspector Supervisor	9,626	55.53	10,107	58.31	10,612	61.22	11,143	64.29	11,700	67.50	12,285	70.87
Code Compliance Officer	7,411	42.76	7,782	44.90	8,172	47.14	8,580	49.50	9,009	51.98	9,459	54.57
Community Services Coordinator	6,168	35.58	6,477	37.37	6,801	39.24	7,141	41.20	7,499	43.26	7,874	45.42
Council Services Assistant	5,581	32.20	5,859	33.80	6,153	35.50	6,460	37.27	6,784	39.14	7,122	41.09
Custodian	3,735	21.55	3,921	22.62	4,118	23.76	4,324	24.95	4,540	26.19	4,768	27.51
Development Services Technician	6,473	37.35	6,797	39.21	7,137	41.17	7,493	43.23	7,868	45.39	8,262	47.67
Electrician	7,710	44.48	8,097	46.71	8,502	49.05	8,926	51.50	9,373	54.08	9,842	56.78
Engineering Technician I	5,723	33.02	6,009	34.67	6,309	36.40	6,625	38.22	6,956	40.13	7,303	42.13
Engineering Technician II	6,328	36.51	6,645	38.33	6,977	40.25	7,325	42.26	7,692	44.37	8,077	46.60
Environmental Programs Coordinator	7,330	42.29	7,696	44.40	8,081	46.62	8,485	48.95	8,910	51.40	9,356	53.97
Exec. Sec. to the Chief of Police	5,723	33.02	6,009	34.67	6,309	36.40	6,625	38.22	6,956	40.13	7,303	42.13
Facilities Maintenance Specialist	6,168	35.58	6,477	37.37	6,801	39.24	7,141	41.20	7,499	43.26	7,874	45.42
Housing Program Coordinator	7,890	45.52	8,285	47.80	8,699	50.19	9,134	52.69	9,591	55.33	10,070	58.10
Information Services Technician	7,330	42.29	7,696	44.40	8,081	46.62	8,485	48.95	8,910	51.40	9,356	53.97
Junior Engineer	7,330	42.29	7,696	44.40	8,081	46.62	8,485	48.95	8,910	51.40	9,356	53.97
Maintenance Worker I	5,072	29.26	5,326	30.73	5,592	32.26	5,871	33.87	6,164	35.56	6,472	37.34
Maintenance Worker II	5,596	32.29	5,877	33.90	6,170	35.60	6,479	37.38	6,803	39.25	7,143	41.21
Maintenance Supervisor	8,129	46.90	8,535	49.24	8,962	51.70	9,410	54.29	9,880	57.00	10,374	59.85
Management Analyst	7,516	43.36	7,892	45.53	8,288	47.81	8,702	50.21	9,137	52.71	9,594	55.35
Municipal Services Assistant	5,345	30.83	5,612	32.38	5,892	33.99	6,187	35.69	6,496	37.47	6,820	39.35
Office Assistant I	3,855	22.24	4,048	23.36	4,250	24.52	4,463	25.75	4,686	27.03	4,920	28.38
Office Assistant II	4,846	27.96	5,089	29.36	5,344	30.83	5,611	32.37	5,891	33.99	6,186	35.69
Plan Check Engineer (added 12/18/19)	9,626	55.53	10,107	58.31	10,612	61.22	11,143	64.29	11,700	67.50	12,285	70.87
Plans Examiner (added 12/18/19)	8,183	47.21	8,591	49.56	9,020	52.04	9,471	54.64	9,945	57.37	10,442	60.24
Police Analyst	8,289	47.82	8,703	50.21	9,138	52.72	9,595	55.36	10,075	58.12	10,579	61.03
Public Works Inspection Supervisor	9,626	55.53	10,107	58.31	10,612	61.22	11,143	64.29	11,700	67.50	12,285	70.87
Public Works Inspector	7,710	44.48	8,095	46.70	8,500	49.04	8,925	51.49	9,371	54.06	9,840	56.77
Recreation Services Coordinator	6,168	35.58	6,477	37.37	6,801	39.24	7,141	41.20	7,499	43.26	7,874	45.42
Senior Accountant	8,063	46.52	8,466	48.84	8,889	51.28	9,333	53.85	9,800	56.54	10,291	59.37
Senior Maintenance Worker	6,168	35.58	6,477	37.37	6,801	39.24	7,141	41.20	7,499	43.26	7,874	45.42
Senior Utility Worker	6,168	35.58	6,477	37.37	6,801	39.24	7,141	41.20	7,499	43.26	7,874	45.42
Senior Public Works Inspector	8,289	47.82	8,703	50.21	9,138	52.72	9,595	55.36	10,075	58.12	10,579	61.03
Support Services Supervisor	7,312	42.18	7,677	44.29	8,061	46.51	8,464	48.83	8,888	51.27	9,332	53.84
Utility Worker I	5,072	29.26	5,326	30.73	5,592	32.26	5,871	33.87	6,164	35.56	6,472	37.34
Utility Worker II	5,596	32.29	5,877	33.90	6,170	35.60	6,479	37.38	6,803	39.25	7,143	41.21
Utility Supervisor	8,262	47.67	8,675	50.05	9,108	52.55	9,564	55.18	10,042	57.93	10,544	60.83
Water Quality Specialist	6,813	39.31	7,154	41.27	7,512	43.34	7,887	45.50	8,281	47.77		

CITY OF MORGAN HILL

PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULE

Salaries effective the pay period including January 1, 2020

CLASSIFICATIONS	Bottom Step Hourly	Top Step Hourly
INTERNS		
High School/College Work Experience Student	\$13.00	\$25.00
POLICE DEPARTMENT		
Graffiti Abatement Worker	\$13.00	\$17.00
Level I Reserve Police Officer	Hourly rate for Step A Police Officer	
Level II Reserve Police Officer	90% of hourly rate for Step A Police Officer	
Police Officer Trainee	90% of monthly rate for Step A Police Officer	
Reserve Officer Trainee	\$15.00	\$15.00
TEMPORARY AND SEASONAL		
Building Coordinator	\$17.00	\$25.00
Clerical Assistant	\$15.00	\$20.00
Communications Technician	\$15.00	\$30.00
Deck Coordinator	\$20.00	\$25.00
Government Access Technician	\$20.00	\$30.00
Fire Plans Examiner/Inspector	\$35.50	\$45.00
Lifeguard	\$14.50	\$18.00
Lifeguard - Lead	\$18.00	\$20.00
Maintenance Worker Assistant	\$15.00	\$20.00
Per Diem Dispatcher	Hourly rate for Public Safety Dispatcher	
Recreation Instructor	\$15.75	\$52.50
Recreation Leader	\$13.00	\$16.00
Recreation Specialist	\$18.00	\$23.00
Retired Annuitant	\$20.00	\$100.00
Senior Recreation Leader	\$16.00	\$21.00
Special Projects Coordinator	\$18.00	\$50.00
Swim Instructor	\$14.00	\$21.00
Swim Instructor - Lead	\$18.00	\$23.00
Welcome Desk Assistant	\$14.00	\$18.00
Welcome Desk Coordinator	\$18.00	\$23.00

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

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 ADOPTED BUDGET TO APPROPRIATE \$100,139 IN THE COMMUNITY DEVELOPMENT FUND (206) FOR THE HIRING OF A NEW PLAN CHECK ENGINEER OR PLANS EXAMINER

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

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 18th day of December 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 December 18, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

012

FUND:

DEPARTMENT:

OBJECT:

206	Community Development Fund
5130	Building Division
VARIOUS	Various

AGENDA DATE:

AGENDA ITEM TITLE:

12/18/19
Plans Check Engineer

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,392,941	5,263,435	5,847,332	809,044
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	136,300	(136,300)
RECOMMENDED ACTION		-	100,139	(100,139)
RESULT OF RECOMMENDED ACTION	<u>1,392,941</u>	<u>5,263,435</u>	<u>6,083,771</u>	<u>572,605</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

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

RECOMMENDATION(S)

Authorize the City Manager to file the Amended Response to the Civil Grand Jury Report, "Inquiry into Governance of the Valley Transportation Authority," 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

Community Engagement and Messaging
Economic Development
Financial Stewardship
Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element
Station Area 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 2) 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 3) 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 City Council reviewed and approved a response to the Grand Jury on September 4, 2019 (Attachment 4).

One of the recommendations, (1c), directs each of the cities in the County to prepare and deliver to VTA and County Board of Supervisors a written report setting forth its views of VTA governance structure. The Grand Jury requested that the reports be

completed and delivered prior to December 31, 2019. Commissioning and preparing these reports are a drain on the City's already scarce resources. Further, smaller cities are not well positioned to engage and advance their individual positions. An alternative to having 15 individual reports, is to have an independent organization such as the Cities Association of Santa Clara County, commission the report, with funding provided by VTA, that delivers comprehensive assessment and feedback from all the cities. Staff is proposing to revise the City's response to recommendation 1c, by not implementing its standalone study (Attachment 1).

Also attached are responses from the County of Santa Clara, and Cities of Palo Alto and Mountain View (Attachment 5 & 6).

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 Council could decide to not amend the initial response and direct staff to prepare a report.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 4, 2019, the City Council approved the initial response to the Grand Jury Report on VTA governance.

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. Morgan Hill - Amended Response
2. Grand Jury Report
3. Grand Jury Letter
4. Morgan Hill Response September 2019
5. Santa Clara County Response
6. Palo Alto and Mountain View Response



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~~September 4~~December 18, 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: Amended 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 amended 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.~~



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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. 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. will not be implemented because it is not reasonable at this time. Individual constituent cities are being asked to research and provide views on various elements of VTA Board structure. Conducting this report would require significant human and fiscal resources, which many cities, including Morgan Hill, are constrained of. The individual cities should wait to prepare their reports once the reports required by recommendation 1a and 1b, as outlined in the Grand Jury Report, are made available. Additionally, consideration should be given to have an independent organization such as Cities Association of Santa Clara County commission the report to represent the 15 individual cities, with funding provided by the VTA.~~

Morgan Hill would encourage that the evaluation of the VTA Board be not based solely on the population distribution, but include factors such as employment and sales tax generation, given that a majority of VTA's revenues are generated from sales tax measures. South Santa Clara County, including Morgan Hill and Gilroy, historically have been underrepresented in VTA policy decisions in ways that do not serve the travelling public.

Recently, Morgan Hill commissioned a regional cut-through traffic study to identify the amount of cut-through traffic using City streets and ultimately to help make decisions regarding congestion management. It is clear the cut-through traffic is mainly due to the vehicles avoiding US 101 congestion, thereby congesting inner city streets. It is evident the job market remains concentrated in the greater bay area, and with housing affordability being a challenge, more workers are having to commute longer distances. It is critical for the South County region to have adequate representation in the VTA Governance which ensures enhanced service levels and options for public transit are available.

Recommendation 1d



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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 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

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City Manager

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.sccscourt.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.

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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.

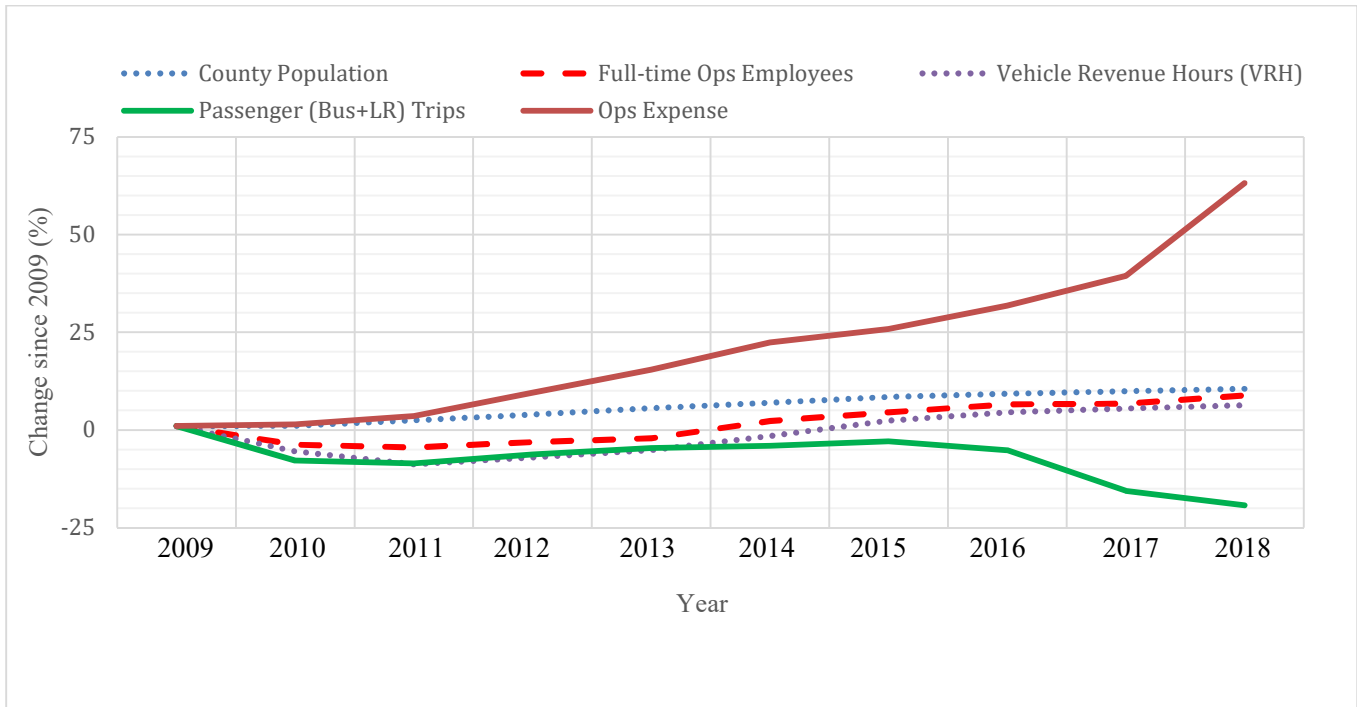


Figure 1 - VTA Operations Trends since 2009

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.

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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.

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

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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7.a

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>

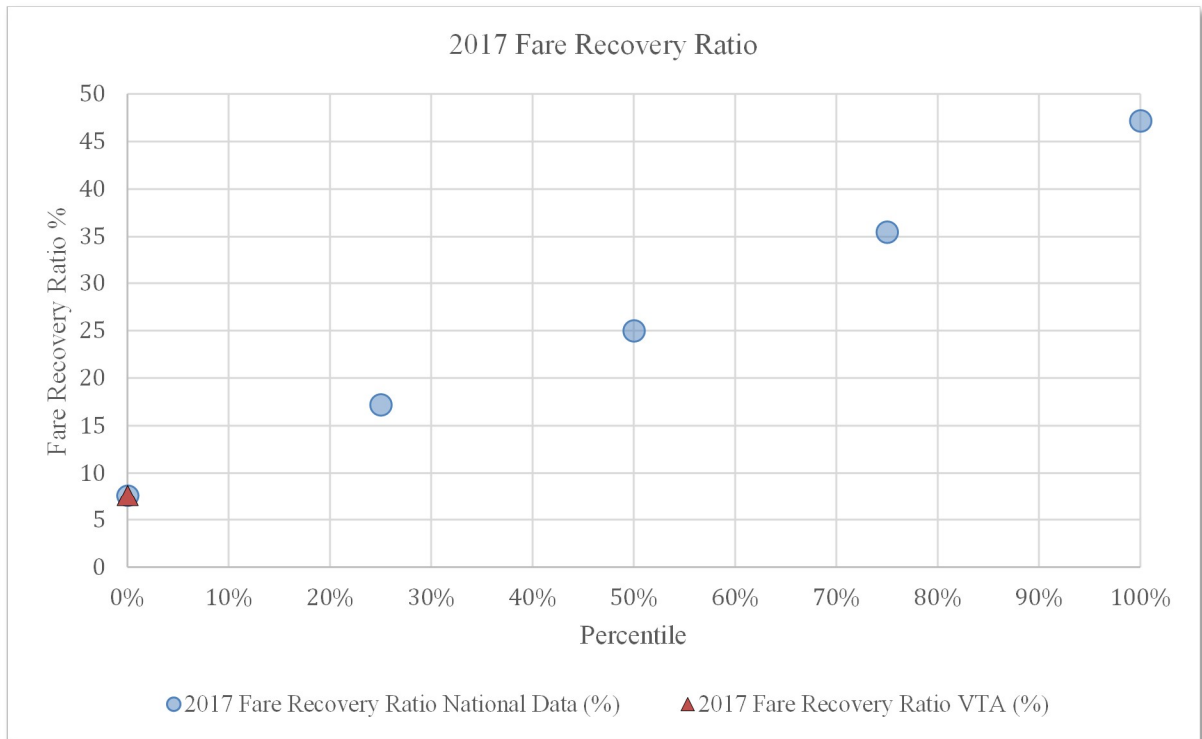
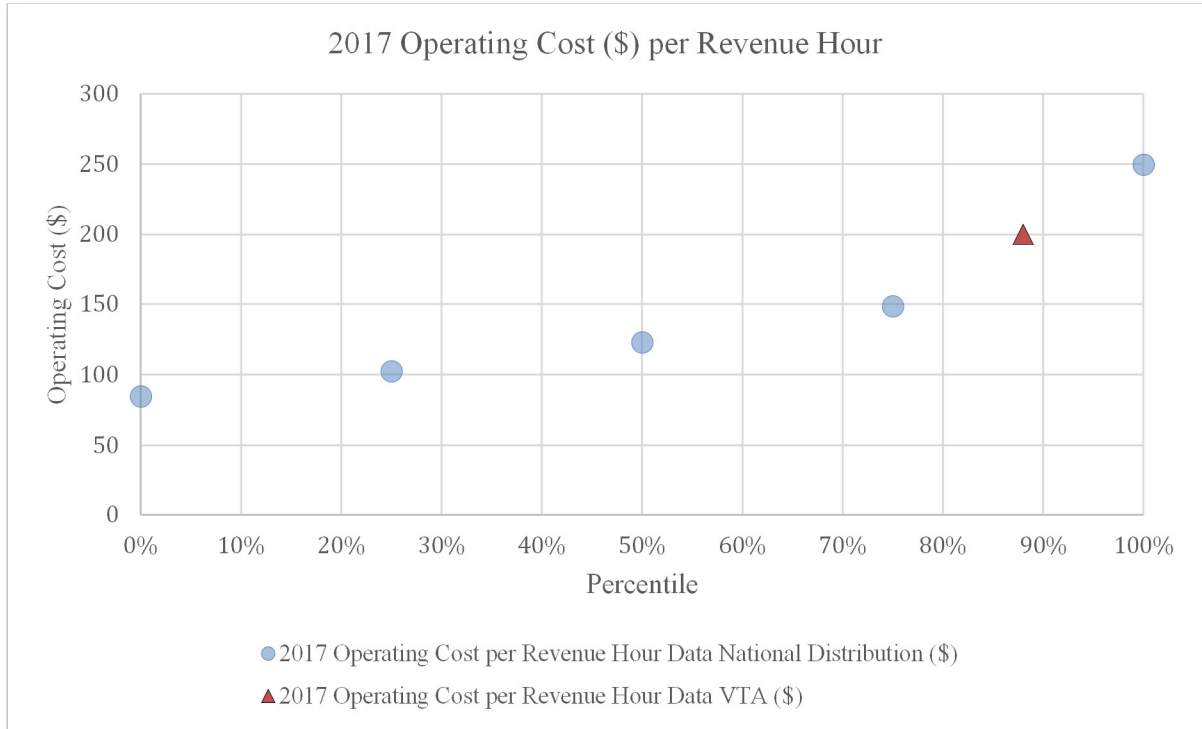
²¹ Santa Clara Valley Transit Authority Annual Agency Profile 2017

<https://www.transit.dot.gov/ntd/transit-agency-profiles/santa-clara-valley-transportation-authority>

²² Service Data and Operating Expenses Time-Series by System

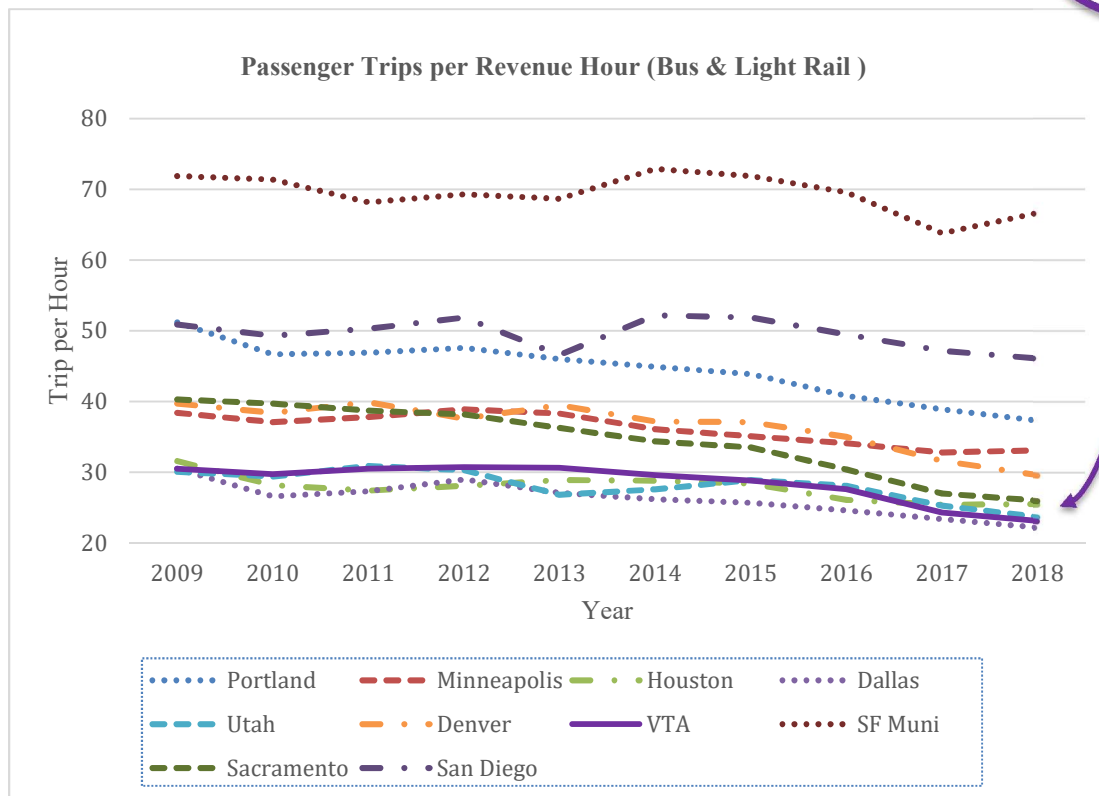
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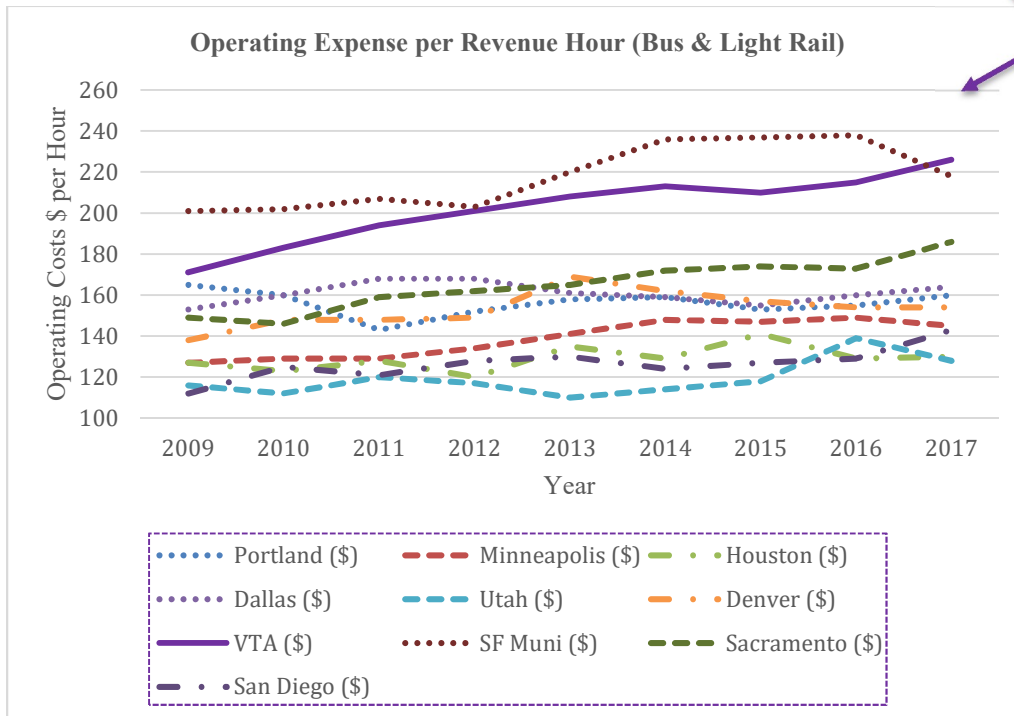
APPENDIX C – Peer Agency Comparisons

This appendix presents various operational metrics for VTA and nine peer agencies. Generally, VTA under-performs all or most of these agencies as noted.



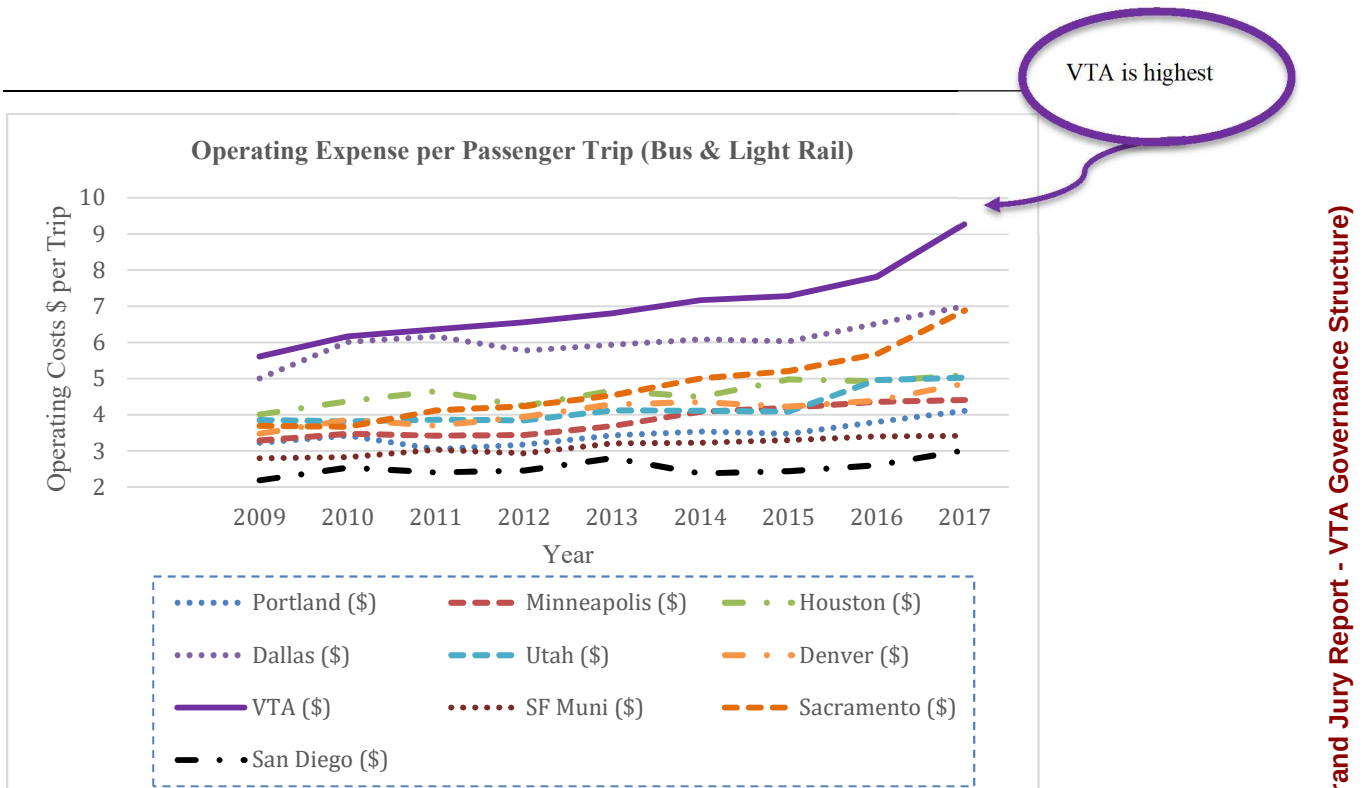
Source of data: <https://www.transit.dot.gov/sites/fta.dot.gov/files/February%202019%20Adjusted%20Database.xlsx>

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



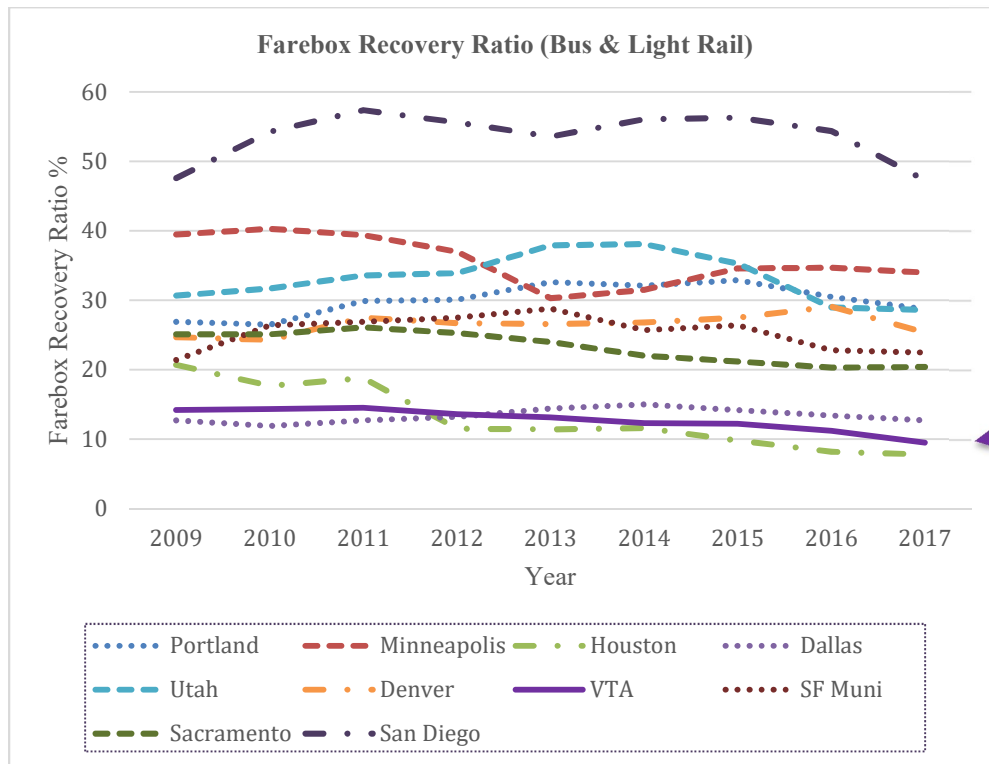
Source of data <https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2>

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>

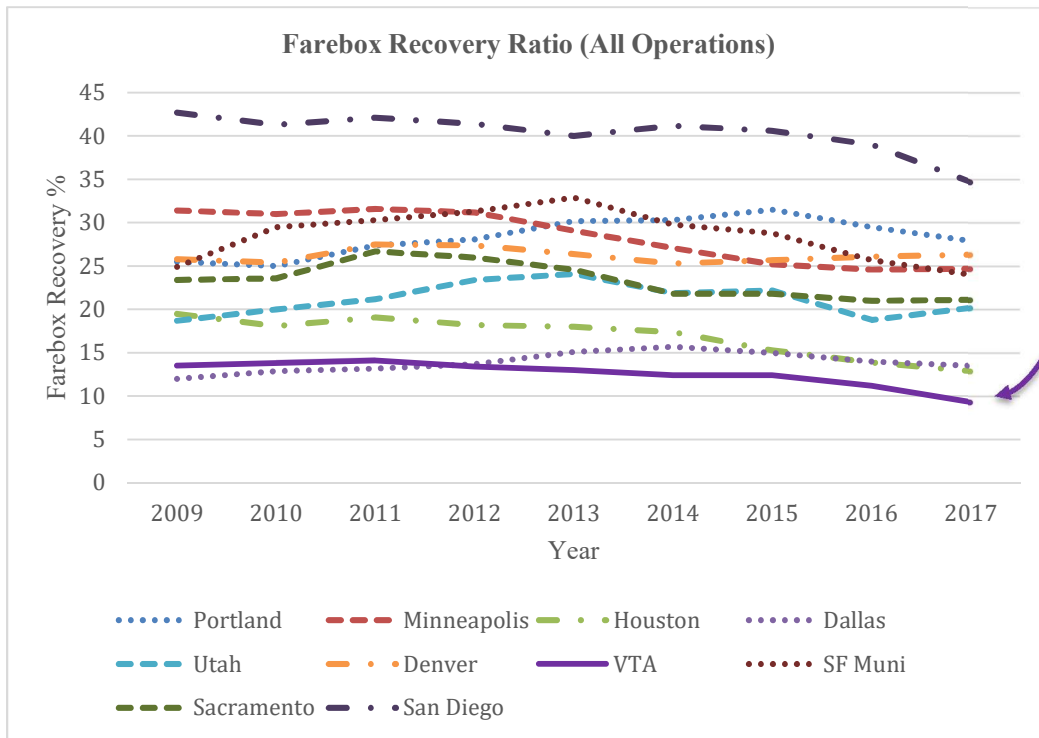
INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY



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>

REFERENCES

1. VTA Ad Hoc Financial Stability Committee Archives for 2018, <http://www.vta.org/Get-Involved/Ad-Hoc-Financial-Stability-Committee>
2. The Coming Transit Apocalypse, O'Toole, October 24, 2017
<https://www.cato.org/publications/policy-analysis/coming-transit-apocalypse>
3. Santa Clara Valley Transportation Authority Ad Hoc Financial Recovery Committee February 10, 2010
<http://www.vta.org/sfc/servlet.shepherd/version/download/068A0000001Fbgu>
4. California Public Utilities Code (PUC), Sections 100060 through 100063.
<https://codes.findlaw.com/ca/public-utilities-code/puc-sect-2870.html>
5. Measure A Transit Improvement Program. See VTA.org Live Website.
<http://www.vta.org/projects-and-programs/programs/2000-measure-a-transit-improvement-program>
6. Santa Clara Valley Transportation Authority Administration Code, w/ Amendments through June 7, 2018. http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/admin_code.pdf
7. American Public Transportation Association (APTA), Quantifying Reporting Transit Sustainability Metrics. June 2012
8. Business Insider, These North American cities have the best public transit systems. November 4, 2017. <https://www.businessinsider.com/best-subway-public-transit-north-america-2017-10#3-vancouver-13>
9. The Best Cities for Public Transportation, SmartAsset Publication. September 20, 2018.
<https://smartasset.com/mortgage/best-cities-for-public-transportation>
10. Assessing Transit Service Improvement, May 3, 2010, San José State University, Urban Planning, Honors Report, Tyree.
http://www.sjsu.edu/urbanplanning/docs/URBP298Docs/urbp298_HonorsReport_Tyree.pdf
11. Hay Group, VTA Organizational and Financial Assessment, March 2007.
<http://www.vta.org/sfc/servlet.shepherd/version/download/068A0000001FbYn>
12. Santa Clara Valley Transportation Authority. Transit Choices Report, Jarrett Walker Associates, February 3, 2016. https://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/Transit_Choices_Report_Full.pdf
13. Transit Services Guidelines, VTA January 2019. <http://www.vta.org/News-and-Media/Connect-with-VTA/Community-Engagement-to-Begin-on-2019-New-Transit-Service-Plan#.XMXysbdKjIU>
14. Jarrett Walker, Randal O'Toole, CATO Institute, October 2, 2018, The Future of Public Transit. <https://www.cato.org/events/the-future-of-public-transit>
15. VTA Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018.
http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/CAFR_FY_2018.pdf

16. Long Range Transportation Plan for Santa Clara County. VTP2040 undated.
http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/VTP2040_final_hi%20res_030315.pdf
17. Why We Need to Stop Subsidizing Public Transit, CATO Institute, Randal O'Toole, May 2018. <https://www.cato.org/publications/commentary/why-we-need-stop-subsidizing-public-transit>
18. California State Auditor, Santa Clara County Transportation Authority, July 2008, Report 2007-129 SUMMARY. <https://www.bsa.ca.gov/reports/summary/2007-129>
19. National Transit Database. October 20, 2018. <https://www.transit.dot.gov/ntd>
20. The Great Transit Rip-Off: Joel Kotkin and Wendell Cox, August 25, 2017.
<https://www.dailynews.com/2017/08/25/the-great-transit-rip-off-joel-kotkin-and-wendell-cox/>
21. Silicon Valley Can't Get Transit Right, Eric Jaffee, January 11, 2013.
<https://www.citylab.com/transportation/2013/01/silicon-valley-cant-get-transit-right/4374/>
22. Paying for Silicon Valley's Transit Upgrade. The Hudson Institute, Walter Russell Mead, April 24, 2017. <https://www.hudson.org/research/13566-paying-for-silicon-valley-s-transit-upgrade>
23. Charting Public Transit's Decline, CATO Institute, Randal O'Toole, November 8, 2018.
<https://www.cato.org/publications/policy-analysis/charting-public-transits-decline>
24. America Needs a Rational Transit Policy, Wendell Cox, Heritage Foundation, March 24, 2015. <https://www.heritage.org/transportation/report/america-needs-rational-transit-policy>
25. American Public Transportation Association: Transit Board Member Handbook. July 2014
26. It's Never Too Late to Stop a Transportation Megafolly, Randal O'Toole, CATO, March 5, 2019. <https://www.cato.org/publications/commentary/its-never-too-late-stop-transportation-megafolly>
27. Getting to the Route of It. The Role of Governance in Regional Transit. The Transit Center. EnoTrans, Washington D.C. October 1, 2014. <https://www.enotrans.org/wp-content/uploads/Transit-Governance.pdf>
28. New York City MTA Board Leadership. From Live Website.
<https://new.mta.info/transparency/leadership/board-members>
29. Governance of Regional Transit Systems. Washington D.C., New York, Toronto. Wilson Center. Canada Institute, June 2014.
<https://www.scribd.com/document/233493152/Governance-of-Regional-Transit-Systems-Washington-New-York-and-Toronto>
30. Houston Metro Board Leadership. From Live Website
<https://www.ridemetro.org/pages/boardofdirectors.aspx>
31. Austin Texas Metro Board Leadership. From Live Website
<https://www.capmetro.org/board/>

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:

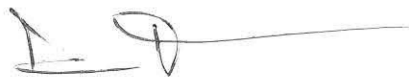
1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with the applicable Finding: 1. If you disagree, in whole or part, you must include an explanation of the reasons you disagree.
2. As stated in Penal Code § 933.05(b), attached, you are required to respond to 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.

Attachment: Grand Jury Letter (2545 : Response to Grand Jury Report - VTA Governance Structure)

Sincerely,

A handwritten signature in dark ink, appearing to be 'JP' followed by a long horizontal line.

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.

[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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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

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



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 95037-4128
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 WWW.MORGANHILL.CA.GOV

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 expertise of the Governing Board. Until those are known, Morgan Hill is unable to determine whether this recommendation is unwarranted or unreasonable. Morgan Hill*



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will have to defer to the findings of further reports and recommendations regarding an improved structure, if made.

Sincerely,

Christina Turner
City Manager

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105



DATE: August 5, 2019

TO: Miguel Márquez
Chief Operating Officer

FROM: Steve Preminger *SP*
Director, Office of Strategic and Intergovernmental Affairs

SUBJECT: Response to Santa Clara County Civil Grand Jury Final Report: Inquiry into the Governance of the Valley Transportation Authority

On June 18, 2019, the Santa Clara County Civil Grand Jury released its final report entitled, **Inquiry into the Governance of the Valley Transportation Authority**. The report contained one finding and three recommendations requiring a response from the County of Santa Clara. This report reflects the County's response to those 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."

Response to Finding 1: The County disagrees in part with Finding 1.

Valley Transportation Authority (VTA) was established in its current governing structure in 1995 as an independent special district by the California legislature. While several Grand Jury reports have made recommendations to make alterations to the governing structure, no changes have been made.

Attachment: Santa Clara County Response (2545 : Response to Grand Jury Report - VTA Governance Structure)

Response to Santa Clara County Civil Grand Jury Final Report: Inquiry into the Governance of the Valley Transportation Authority

August 5, 2019

Page 2 of 3

Each of the members of the VTA governing board is elected to office in their respective jurisdictions and are then selected through a public process in each jurisdiction to sit on the VTA board. The Public Utilities Code (PUC) dictates that, to the extent possible, appointments to the VTA board be made of individuals who have expertise, experience or knowledge relative to transportation issues. Because the PUC code calls for members with useful background in transportation issues, the County would not benefit in supporting governance structures other than what the State Legislature has already put in place, since the composition of the VTA board is expected to include such qualifications. Beyond the composition of the VTA Board membership, the other areas of concern identified in the report could be addressed by the VTA itself, and do not require legislative action.

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 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.”

Response to Recommendations 1b, 1d, and 1e:

The County does not plan to implement the recommendations as described. The County has examined the current report and does not believe the Grand Jury’s recommendations to legislatively change the composition and structure of the VTA Board will address the problems articulated in the report. Issues with director engagement and other concerns can be addressed

Response to Santa Clara County Civil Grand Jury Final Report: Inquiry into the Governance of
the Valley Transportation Authority

August 5, 2019

Page 3 of 3

without legislative change, and the County will support VTA's efforts to address the issues raised in the report, to the extent possible given the County's role.

In addition, a turnaround in ridership would address concerns of low ridership raised in the report. Opportunities such as Caltrain's new business plan, which is being unveiled to the public this year, offers opportunity for VTA to realize its potential to move many more riders throughout the county. Altering VTA's governing structure would not be in the interest of such a shift, given that it would result in the loss of knowledge represented by the current governing board.

County of Santa Clara

10.e

Office of the Clerk of the Board of Supervisors
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-5001 FAX 938-4525 TDD 993-8272



Megan Doyle
Clerk of the Board

September 10, 2019

The Honorable Deborah A. Ryan
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

RE: Grand Jury Report: Inquiry into Governance of the Valley Transportation Authority

Dear Judge Ryan:

At the August 27, 2019 meeting of the County of Santa Clara Board of Supervisors (Item No. 43), the Board adopted the response from the Office of the County Executive to Final Civil Grand Jury Report entitled, Inquiry into the Governance of the Valley Transportation Authority.

As directed by the Board of Supervisors and on behalf of the Board President, our office is forwarding to you the enclosed copy of the response to the Final Grand Jury Report. The response constitutes the response of the Board of Supervisors, consistent with provisions of California Penal Section 933(c).

If there are any questions concerning this issue, please contact our office at (408) 299-5001 or by email at boardoperations@cob.sccgov.org.

Sincerely,

Jessica Schmidt
Deputy Clerk, Board of Supervisors
County of Santa Clara

Enclosures

Attachment: Santa Clara County Response (2545 : Response to Grand Jury Report - VTA Governance Structure)

Mountain View:

1 a, b, c Response: The recommendation will not be implemented because it is not reasonable. Recommendations 1a and 1b specify that the VTA and County Board of Supervisors will each commission separate studies of the governance structure of successful large city transportation agencies by December 31, 2019. Presumably, the individual reports from all 15 constituent cities due by December 31, 2019 as specified in Recommendation 1c are intended to provide input into these two studies. Recommendations 1a, 1b, and 1c combined fail to indicate a process by which the results of the two studies and 15 reports will be used to identify and develop consensus for potential changes to the governance structure. How will the constituent cities be engaged in the discussions about the governance structure after they have submitted their reports? Furthermore, cities are being asked to research and provide their views on the various elements of the VTA Board structure prior to seeing the results of the comparative study into the governance structures of successful large city transportation agencies. This is an inefficient use of scarce municipal resources. It will be more productive for the cities to provide their views after the comparative research is concluded and prior to any recommendations being made on changes to VTA's governance structure.

Consideration should be given to having an independent organization, such as the Cities Association of Santa Clara County, commission the recommended study with funding provided by the VTA. The Cities Association's study can either be in addition to studies conducted by VTA and/or the Board of Supervisors or in place of one or both of these studies. At a minimum, the Cities Association could take the results of the research into the governance structures of successful large city transportation agencies and of successful transit agencies whose service area spans multiple municipalities and lead a process to gather and document the perspectives of the 15 cities. In addition to the Board composition and selection process noted in Recommendation 1a, the study should also consider Board operations options such as higher voting thresholds for major expenditures. Once VTA funding is committed, at least 180 days will be needed to complete the study and ensuing discussion/documentation of perspectives and recommendations by all represented governing bodies to the VTA Board and County Board of Supervisors. This study should be completed prior to June 30, 2020.

1d Response: The recommendation requires further analysis.

While the County or one or more of the VTA's constituent agencies may ultimately propose amendments to Sections 100060 through 100063 to improve VTA's governance structure, it is premature to recommend such a proposal prior to the preparation and analysis of the study recommended in Recommendation 1a.

1 e Response: The recommendation requires further analysis.

Recommendation 1e presupposes that stronger leadership by the Chairperson of the VTA Board will improve the governance structure of the VTA. However, there is also the possibility that extending the term of the Chairperson to two years may only reinforce dominance of the Board by the larger agencies. The City of Mountain View considers this recommendation premature. After the comparative study recommended in Recommendation 1a is completed, a full range of governance structure options should be analyzed, including how the Chairperson is selected and the Chairperson's length of term.

Palo Alto:

1 a 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.

1 b 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.

1 c 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.

1 d 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.

1 e 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.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

AWARD CITY FACILITY FIBER NETWORK INFRASTRUCTURE PROJECT

RECOMMENDATION(S)

1. Approve City Facility Fiber Network Infrastructure Project plans and specifications;
2. Award contract to Elco Electric, Inc. for the City Facility Fiber Network Infrastructure Project in the amount of \$160,589;
3. Authorize expenditure of construction contingency funds not to exceed \$32,118; and
4. Authorize the City Manager to execute and administer the construction contract with Elco Electric, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Telecommunications

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

Increasing costs for internet services on individual City owned facility site locations are driving up operational costs. By developing and connecting a City-owned network, it will generate significant cost savings and provide a much more reliable internet connection. An early opportunity to enhance the City owned Citywide Fiber Network Infrastructure Project will provide fiber optic conduit and fiber optic cable connections between the Centennial Recreation Center, Corporation Yard, and Community Park.

Following the guidelines of the Informal Bid Process, the Project was advertised on October 2019. This project included a base bid for the installation of approximately 1700 linear feet of fiber optic conduit and cable for the work as described above and an additive alternate to extend approximately 75 linear feet of fiber optic conduit and cable to a nearby camera site location at the Centennial Recreation Center.

The bid opening for the project was held on December 3, 2019 and the bid result was as follows:

	Base Bid	Add Alternate	Subtotal
Elco Construction, Inc.	\$135,589	\$25,000	\$160,589
West Valley Construction, Inc.	153,372	34,703	188,075

DV Electric Co.	154,200	9,520	163,720
Daleo, Inc.	161,166	5,100	166,266
Empire Earthworks, LLC	195,070	-	195,070

The bid proposals received were structured such that the lowest base bid was the lowest responsible bidder. In this instance, the lowest responsible bidder was Elco Construction, Inc.

Elco Construction, Inc.'s bid amount is approximately 7% more than the engineer's estimate of \$150,000. Elco Electric, Inc. is an experienced contractor of this type of work and has performed similar work previously. Thus, staff recommends award of the contract to Elco Electric, Inc. in the amount of \$160,589. Due to the unknowns associated with any undergrounding construction, staff recommends a 20% contingency (\$32,118) for this project. The project is scheduled to begin in January 2020 and expected to be completed by April 2020, assuming no significant project delays.

The project plans and specifications can be found on the City's web page in the Community Projects link (<http://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>).

COMMUNITY ENGAGEMENT: Inform

Staff will provide email notifications prior to construction activities. Staff will also provide updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to not award this construction contract and request to re-bid the project in hopes of obtaining a lower bid amount. However, this does not guarantee that the new bid amounts will be lower and would delay the project by a minimum of four months.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

June 6, 2018 – City Council adopted the FY 2018-19 to FY 2023-24 Capital Improvement Program.

FISCAL AND RESOURCE IMPACT:

The total authorization for this project would be \$192,707, which includes a 20% contingency of \$32,118. The project is sufficiently funded in the adopted FY 2018-19 through FY 2023-24 Capital Improvement Program (CIP) as CIP Project # 801018, from the Information Services Fund (730).

CEQA (California Environmental Quality Act):

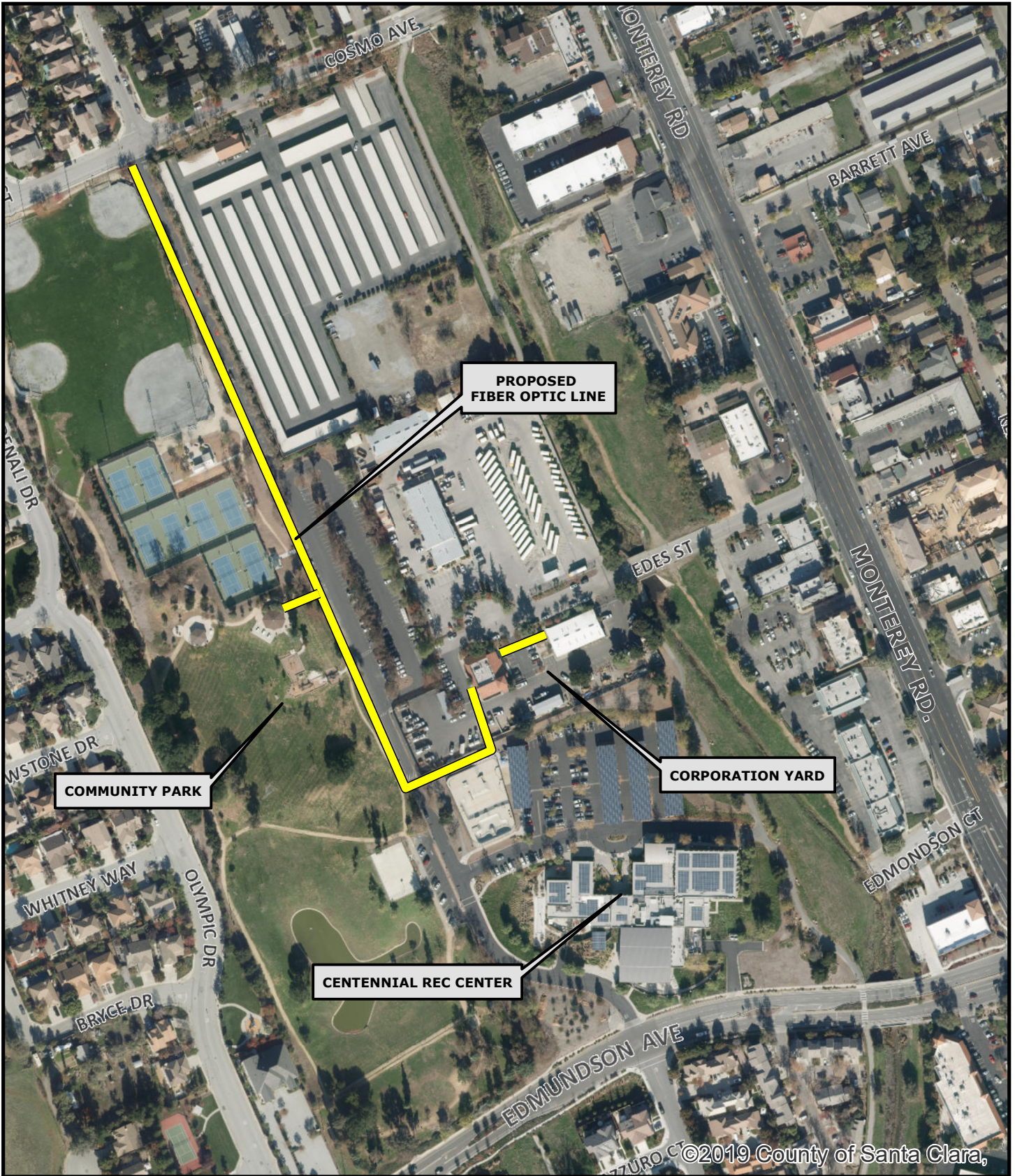
Categorical Exemption.

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures), as the subject work involves fiberoptic line extension

that would connect the Centennial Recreation Center, Corporation Yard, and Community Park.

LINKS/ATTACHMENTS:

1. Vicinity Map



Attachment: Vicinity Map (2570 : Award City Fiber Network Infrastructure Project)

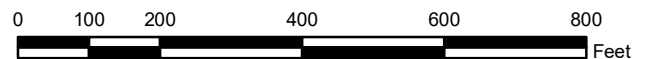


CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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CITYWIDE FIBER NETWORK INFRASTRUCTURE PROJECT





CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

ADOPT ORDINANCE 2308 NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING MAP AMENDMENT ZA2019-0006 FOR AN RDM-7,000/PLANNED DEVELOPMENT COMBINING DISTRICT AND PLANNED DEVELOPMENT MASTER PLAN FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANA LEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2308, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On November 20, 2019, the City Council introduced Ordinance No. 2308 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Constantine; NOES: None; ABSTAIN: None; ABSENT: Martinez Beltran.

The applicant applied for a Zoning Map Amendment to establish a Planned Development (PD) Combining District and Master Plan on February 12, 2019. The project will subdivide a 4.84-acre site into 24 residential lots and develop 24 single family residences, public access roads, a private park, and associated improvements. The master plan would allow setback deviations on 13 designated lots.

Ordinance 2308 would approve a Zoning Map Amendment ZA2019-0006: Diana-Mana Hanalei (Montecito Estates Project) and change the zoning designation of the subject parcels (APN 726-09-001 and 726-09-002) from Residential Detached Medium Density

7,000 SF (RDM-7,000) to RDM-7,000/PD Combining District and establish a master plan for the 24-unit residential development project.

COMMUNITY ENGAGEMENT: 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. The project was also publicly heard at the October 22, 2019 Planning Commission meeting.

ALTERNATIVE ACTIONS:

N/A

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

An application was submitted for the 2017 Residential Development Control System (RDSCS) competition requesting 23 building allotments for the project site. At the May 22, 2018 Planning Commission meeting, the Commission adopted Resolution No. 18-13 awarding the project 23 Fiscal Year 2019-20 building allotments. On June 20, 2018, the City Council approved Resolution No. 18-050, reaffirming the distribution of the RDSCS allotments for Fiscal Year 2019-20.

On October 8, 2019, the public hearing was continued to October 22, 2019 to allow time for staff to complete the necessary documentation for the project. The Planning Commission voted to approve the Tentative Subdivision Map and adopted the Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Reporting Program. The Planning Commission also approved resolutions to recommend that the City Council approve the Development Agreement and Zoning Amendment request to establish a PD Combining District and PD Master Plan.

The Ordinance was introduced at the November 20, 2019 City Council meeting.

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 Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project by Geier & Geier Consulting, Inc. dated July 2019 in conformance with the California Environmental Quality Act (CEQA) and adopted by the Planning Commission on October 22, 2019. As explained above, non-substantive changes were made for clarification purposes only and do not affect the environmental analysis.

LINKS/ATTACHMENTS:

1. 2308 Diana-Mana Hanalei Zoning Amendment

ORDINANCE NO. 2308 NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING MAP AMENDMENT ZA2019-0006 FOR AN RDM-7,000/PLANNED DEVELOPMENT COMBINING DISTRICT AND PLANNED DEVELOPMENT MASTER PLAN FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANAIEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed amendment is consistent with the general plan and any applicable specific plan as provided by Government Code Section 65860.

The project complies with the allowed density range for units on the site in accordance with the General Plan.

SECTION 2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

The project is a housing project that would provide an opportunity for those seeking housing in the current housing market.

SECTION 3. The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the zoning code and general plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.

The project is a residential housing development with lot sizes similar to the surrounding residential developments. The proposed circulation will provide connectivity and complete circulation patterns to adjoining neighborhoods.

SECTION 4. The proposed development is consistent with the general plan, zoning code and any applicable specific plan or area plan adopted by the city council.

The proposed development is consistent with the policies established by the General Plan and Zoning Code.

- SECTION 5.** The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

The development will be of high design standards with varied and distinct architecture and details.

- SECTION 6.** The proposed project will provide a substantial public benefit. The public benefit provided shall be of sufficient value as determined by the planning commission to justify deviation from the standards of the zoning district that currently applies to the property.

There are several examples of public benefits listed but are not limited to in MHMC 18.30.050.H.8 such building affordable housing, improved pedestrian pathways, circulation, and connectivity to the surrounding neighborhood, and also green building design. The project is proposing several public benefits including building two BMRs incorporated within the project in addition to contributing to the City's Affordable Housing Fund at an 110% rate of baseline contributions. Off-site improvements are proposed along Diana Avenue and Weichert Drive for roadway connectivity, consistency of pedestrian walking facilities (attached/detached sidewalks), and traffic calming and safe circulation. The applicant is also obtaining additional dedicated ROW along Dakota Drive to help supplement the circulation and connectivity. Through various measures such as sustainable design and water efficient landscaping, the project is anticipated to be 19 points over the minimum requirement for "Build It Green" points, exceeds the CA Title 24 energy efficiency standards by 15%, anticipates using 48% less outdoor water than is allowed by water efficiency standards.

- SECTION 7.** The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The project site is 4.84-acres and will have a density of 4.95 dwelling units per acre. The size and shape of the site will accommodate the proposed residential and open space uses.

- SECTION 8.** Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The site fronts Diana Avenue and Lotus Way. Roadway extensions will be made on Dakota Drive, Juliann Way, and Weichert Drive. A new cul-de-sac will be constructed off Lotus Way. There are wet and dry utilities and infrastructure in the surrounding area that will support the project. See Exhibit A.

SECTION 9. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area

The project is compatible with the surrounding single-family residential uses and will not have a substantial adverse effect with conditions of approval and mitigation measures included.

SECTION 10. The request was considered by the Planning Commission at its regular meeting of October 22, 2019, at which time the Planning Commission recommended approval of Zoning Amendment application, ZA2019-0006: Diana-Mana Hanalei. The City Council accepts the recommendation of the Planning Commission.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF NOVEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 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:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICH 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. 2308, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of December 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

Montecito Estates
site development plan

building coverage calcs.:

EXISTING	SETBACK CREATION	TREE TO BE REMOVED
0.00 ACRES	0.228 ACRES	0.00 ACRES
0.00 ACRES	0.228 ACRES	0.00 ACRES
0.00 ACRES	0.228 ACRES	0.00 ACRES
0.00 ACRES	0.228 ACRES	0.00 ACRES

setback notes:

1. TYPICAL FRONT YARD SETBACK: 10' MIN.

2. TYPICAL SIDE YARD SETBACK: 5' MIN.

3. TYPICAL REAR YARD SETBACK: 10' MIN.

4. TYPICAL SIDE YARD SETBACK: 5' MIN.

5. TYPICAL REAR YARD SETBACK: 10' MIN.

6. TYPICAL SIDE YARD SETBACK: 5' MIN.

7. TYPICAL REAR YARD SETBACK: 10' MIN.

8. TYPICAL SIDE YARD SETBACK: 5' MIN.

9. TYPICAL REAR YARD SETBACK: 10' MIN.

10. TYPICAL SIDE YARD SETBACK: 5' MIN.

11. TYPICAL REAR YARD SETBACK: 10' MIN.

12. TYPICAL SIDE YARD SETBACK: 5' MIN.

13. TYPICAL REAR YARD SETBACK: 10' MIN.

14. TYPICAL SIDE YARD SETBACK: 5' MIN.

15. TYPICAL REAR YARD SETBACK: 10' MIN.

16. TYPICAL SIDE YARD SETBACK: 5' MIN.

17. TYPICAL REAR YARD SETBACK: 10' MIN.

18. TYPICAL SIDE YARD SETBACK: 5' MIN.

19. TYPICAL REAR YARD SETBACK: 10' MIN.

20. TYPICAL SIDE YARD SETBACK: 5' MIN.

21. TYPICAL REAR YARD SETBACK: 10' MIN.

22. TYPICAL SIDE YARD SETBACK: 5' MIN.

23. TYPICAL REAR YARD SETBACK: 10' MIN.

24. TYPICAL SIDE YARD SETBACK: 5' MIN.

density calcs.:

TOTAL PROJECT AREA	PROJECT NET AREA	PROJECT NET AREA	PROJECT NET AREA	PROJECT NET AREA
4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES
4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES
4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES
4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES	4.55 ACRES

building notes:

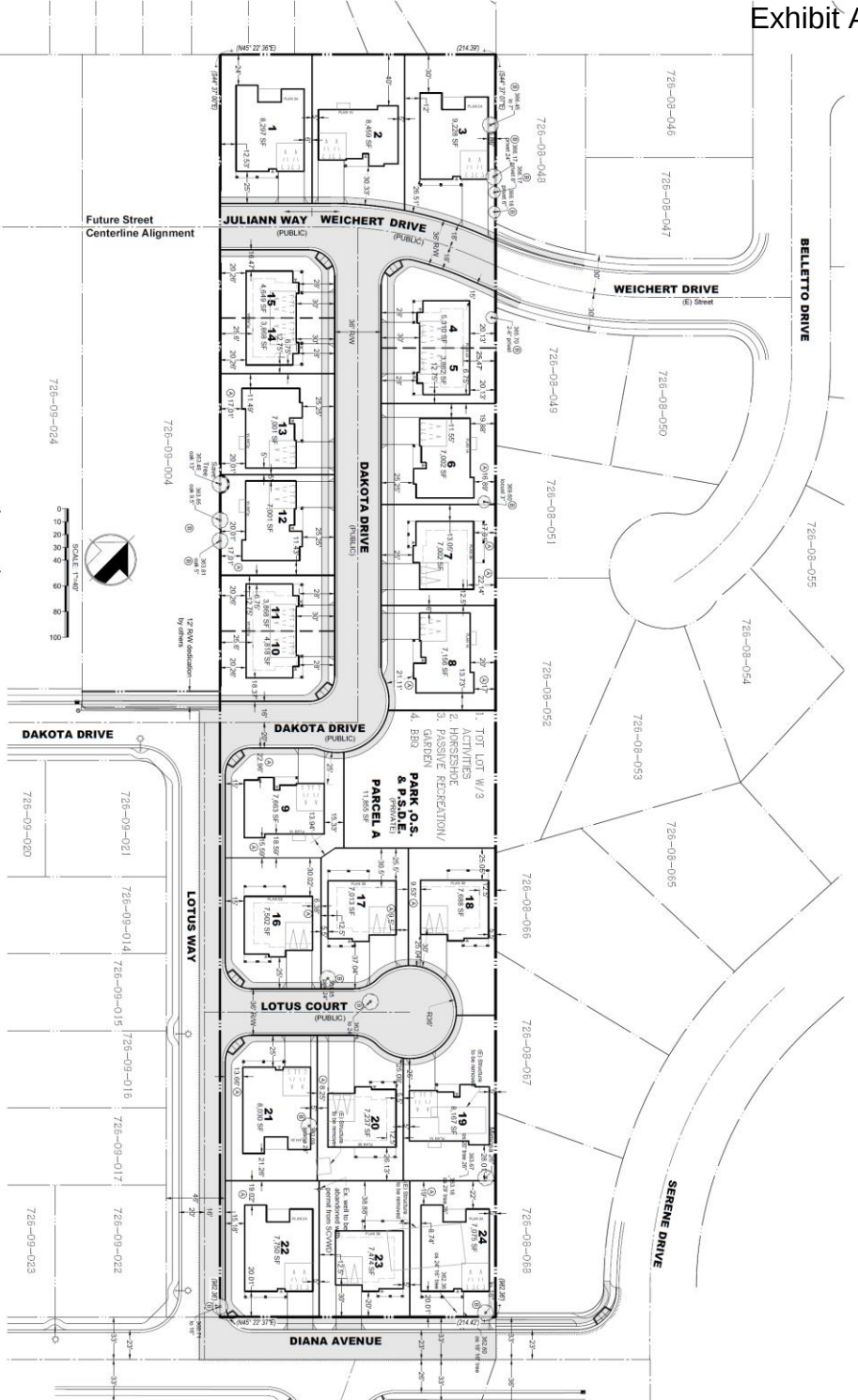
LOT #	PLAN #	LOT AREA (SQ FT)
1	2A	6000
2	2A	6000
3	2A	6000
4	2A	6000
5	2A	6000
6	2A	6000
7	2A	6000
8	2A	6000
9	2A	6000
10	2A	6000
11	2A	6000
12	2A	6000
13	2A	6000
14	2A	6000
15	2A	6000
16	2A	6000
17	2A	6000
18	2A	6000
19	2A	6000
20	2A	6000
21	2A	6000
22	2A	6000
23	2A	6000
24	2A	6000

applicant: MANS BROWN, LLC
5927 BALFOUR CT., SUITE 208
SAN JOSE, CA 95128
(408) 879-0132

engineer: MH engineering Co.
1400 WILSON BLVD., SUITE 200
SAN JOSE, CA 95128
(408) 779-7381

sheet index:

1. Title Sheet
2. Preliminary Map
3. Grading & Erosion Control
4. Stormwater Management Plan



vicinity map:



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE 2309 NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT DA2018-0003: DIANA-MANA HANAIEI (MONTECITO ESTATES) FOR A 24-LOT RESIDENTIAL SUBDIVISION ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF DIANA AVENUE AND LOTUS WAY (APN 726-09-001 & 726-09-002)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2309, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On November 20, 2019, the City Council introduced Ordinance No. 2308 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Constantine; NOES: None; ABSTAIN: None; ABSENT: Martinez Beltran.

Ordinance 2309 would approve a Development Agreement DA2018-0003: Diana-Mana Hanalei (Montecito Estates Project) that will incorporate the awarded RDCS allotments and memorialize the RDCS public benefit commitments for 23 Fiscal Year 2019-2020 building allotments. The project will develop a 24-lot single family residential subdivision on a 4.84-acre parcel and develop 24 single family residences, public access roads, a private park, and associated improvements.

During the November 20, 2019 City Council meeting, there was a discussion on whether the applicant's commitment to build two Below Market Rate (BMR) units and paying the difference of contributing to the City's Affordable Housing Fund at an 110% rate of baseline contributions would meet the City's adopted Inclusionary Housing Ordinance. After further review, staff determined there was a mathematical error in the

exhibit. The current fee calculations in the affordable housing category in the exhibit have been corrected and as a result the development will contribute \$1.3M in public benefit to the housing fund, which is preferred over building of the units in this development, as it will allow the City to fill a need in another category of very low income (VLI).

COMMUNITY ENGAGEMENT: 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. The project was also publicly heard at the October 22, 2019 Planning Commission meeting.

ALTERNATIVE ACTIONS:

N/A

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

An application was submitted for the 2017 Residential Development Control System (RDSCS) competition requesting 23 building allotments for the project site. At the May 22, 2018 Planning Commission meeting, the Commission adopted Resolution No. 18-13 awarding the project 23 Fiscal Year 2019-20 building allotments. On June 20, 2018, the City Council approved Resolution No. 18-050, reaffirming the distribution of the RDSCS allotments for Fiscal Year 2019-20.

On October 8, 2019, the public hearing was continued to October 22, 2019 to allow time for staff to complete the necessary documentation for the project. The Planning Commission voted to approve the Tentative Subdivision Map and adopted the Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Reporting Program. The Planning Commission also approved resolutions to recommend that the City Council approve the Development Agreement and Zoning Amendment request to establish a PD Combining District and PD Master Plan.

The Ordinance was introduced at the November 20, 2019 City Council meeting.

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. The commitments for affordable housing are outlined in the narrative above. In addition, the development will make public benefit commitments in the areas of schools, parks and open space, transportation, municipal infrastructure, and public art.

CEQA (California Environmental Quality Act):

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project by Geier & Geier Consulting, Inc. dated July 2019 in conformance with the California Environmental Quality Act (CEQA) and adopted by the Planning Commission on October 22, 2019. As explained above, non-substantive changes were made for clarification purposes only and do not affect the environmental analysis.

LINKS/ATTACHMENTS:

1. 2309 Diana-Mana Hanalei Development Agreement

ORDINANCE NO. 2309, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2018-
0003: DIANA-MANA HANAIEI (MONTECITO ESTATES)
FOR A 24-LOT RESIDENTIAL SUBDIVISION ON A 4.84-
ACRE SITE LOCATED ON THE NORTHWEST CORNER
OF DIANA AVENUE AND LOTUS WAY (APN 726-09-001 &
726-09-002)**

**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 23 building allotments for application RDCS 2017-0015: Diana-Mana Hanalei for Fiscal Year (FY) 2019-20.
- SECTION 2.** The City Council of the City of Morgan Hill enacted Ordinance number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code.
- 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.** The Development Agreement request was considered by the Planning Commission at its regular meeting of October 22, 2019 at which time the Planning Commission recommended approval of Development Agreement DA2018-0003: Diana-Mana Hanalei (Montecito Estates) based on the findings described below;
- SECTION 5.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 6. The Development Agreement 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 subdivide the property into 24 residential lots, with 24 new single-family dwelling unit. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 7. The Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located.

The proposed residential use is permitted within the RDM-7,000 zoning district and would be compatible with the surrounding residential uses.

SECTION 8. The Development Agreement duly considers city mitigation programs in effect at the time of execution of the agreement.

The project would be subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 9. The Development 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.

The project's construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 10. The Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The City has completed an Initial Study and a Mitigated Negative Declaration, along with a Mitigation Monitoring and Reporting Program, which the Planning Commission considered and adopted as part of the Tentative Subdivision Map approval.

SECTION 10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

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 20th DAY OF NOVEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 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:

ATTEST:

APPROVED:

IRMA TOREZ, City Clerk

RICH CONSTANTINE, Mayor

Attachment: 2309 Diana-Mana Hanalei Development Agreement [Revision 3] (2582 : Adopt Ordinance 2309 - Diana-Mana Hanalei DA

⌘ 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. 2309, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of December 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

**RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383**

DEVELOPMENT AGREEMENT

[DA#2018-0003: Diana – Mana]

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

MONTECITO ESTATES MH LLC

REGARDING

THE DIANA-MANA HANAIEI RESIDENTIAL DEVELOPMENT PROJECT

Attachment: 2309 Diana-Mana Hanalei Development Agreement [Revision 3] (2582 : Adopt Ordinance 2309 - Diana-Mana Hanalei DA

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
MONTECITO ESTATES MH LLC
REGARDING THE
DIANA-MANA HANAIEI 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 Montecito Estates MH LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. 23 Fiscal Year (FY) 2019-20 Building Allotments Approved Pursuant to RDCS Application: RDCS2017-0015, and conditions attached to the award of such allotments;

2. **Environmental Assessment Application EA 2018-0004;**

3. **Zoning Amendment Application ZA 2019-0006;**
4. **Tentative Subdivision Map Application SD2018-0006;**

The Existing Approvals are more particularly described in the Administrative Initial Study/Mitigated Negative Declaration for the Diana-Mana Hanalei or "Montecito Estates" project and the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On May 22, 2018, the Morgan Hill Planning Commission awarded allotments for the Project and on June 20, 2018, the City Council reaffirmed and approved the distribution as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

G. On October 22, 2019, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that this Agreement's provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) **"Allotments"** shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) **"Applicable Law"** shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) **"Commitments"** shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) **"Director"** shall mean the Director of Development Services, 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 24 units in a residential subdivision project, as more particularly described in the RDCS Application RDCS2017-0015 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 4.84 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.

(16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) *All the provisions, terms and conditions of this Agreement.*
- (2) *Existing Approvals.*

- (3) *The Subsequent Approvals, provided such Subsequent Approvals are:*
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) *The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.*
- (5) *Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.*

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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 Development Services 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.

(k) The Developer's RDCS application – RDCS2017-0015: Diana - Hanalei and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission on March 13, 2018, March 27, 2018, and May 22, 2018) 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.

(l) 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.

(m) 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 Development Services Director of the City of Morgan Hill reasonably requests.

(n) 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.

(o) 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.

(p) 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.

(q) 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.

(r) 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.

(s) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the

Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) *Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;*

(2) *Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;*

(3) *Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;*

(4) *Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.*

(t) 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).

(u) 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.

(v) 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.

(w) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions and allotment adjustments for ongoing projects shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, Substitution of Commitments within the same criteria category may be processed administratively by the Development Services Director. Any Administrative Amendment must be made in writing approved by the Director and approved by the City Attorney, and signed by the Developer.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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**").

(i) 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.

(j) 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.

(k) 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).

(l) 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).

(m) 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.

(n) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) *This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.*

(2) *The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.*

(o) 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.

(p) 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.

(q) 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.

(r) 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

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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.

(s) 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.

(t) 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.

(u) 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).

(v) 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.

(w) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant

to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) *All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.*

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Scott Murray or Orville Power Montecito Estates MH, LLC 5927 Balfour Court Carlsbad, CA 92008 Tel: (408) 406-6000
<u>With a Copy To:</u>	Vince McCarrie D.R. Horton 6683 Owens Drive Pleasanton, CA 94588 Tel: (925) 225-7490

(2) *Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.*

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

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

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties are on the following page.

///

///

///

//

Attachment: 2309 Diana-Mana Hanalei Development Agreement [Revision 3] (2582 : Adopt Ordinance 2309 - Diana-Mana Hanalei DA

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

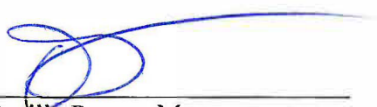
s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Montecito Estates MH, LLC



Orville Power, Manager

Date: 11/7/19

*Corporate entities must provide a
second signature:*

s/ _____

Name/Title [print]

Date: _____

Adopted by Ordinance No. _____
by action of City Council on _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

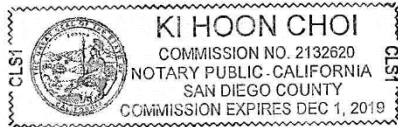
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)
On Nov. 7, 2019 before me, Ki Hoon Choi, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Orville Power
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 _____
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: Residential Development Agreement by and Between The City of Morgan Hill and Montecito Estate, LLC
Title or Type of Document: Regarding The Diana - Mana Hanalei Project
Document Date: Nov. 7, 2019 Number of Pages: 38
Signer(s) Other Than Named 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: _____

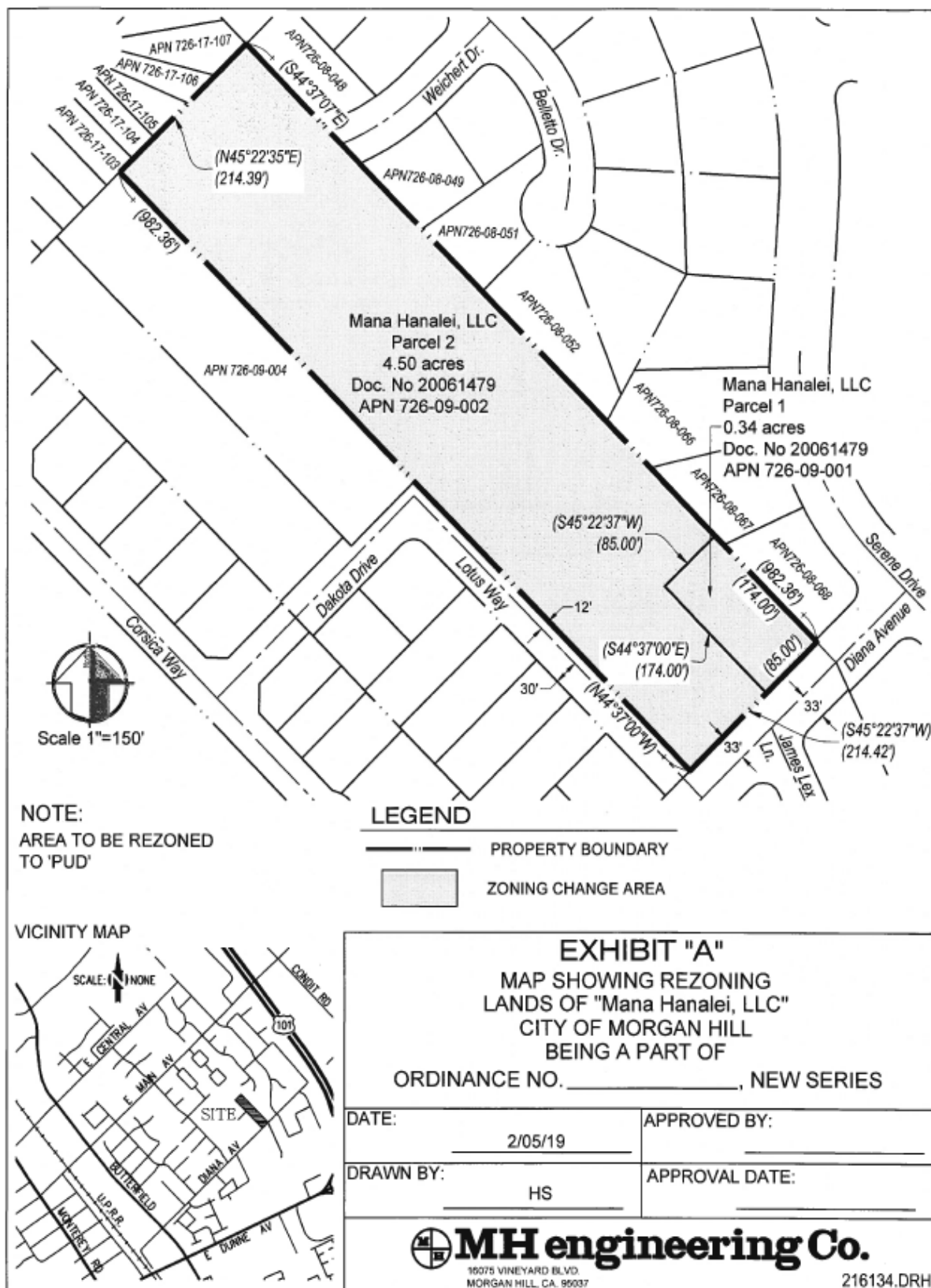
Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND BEING A PORTION OF LOT 50, AS SHOWN UPON "MORGAN HILL RANCH MAP NO. L ", FILED IN BOOK 'G' OF MAPS, PAGES 2 & 3, ON JUNE 1, 1892 AT THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED IN THE INDIVIDUAL QUIT CLAIM DEED, DOC. NO. 20061479, RECORDED ON DECEMBER 08, 2008 AT THE OFFICIAL RECORDS OF SAID COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Attachment: 2309 Diana-Mana Hanalei Development Agreement [Revision 3] (2582 : Adopt Ordinance 2309 - Diana-Mana Hanalei DA

All of PARCEL ONE and PARCEL TWO as described in Exhibit 'A' of said deed.



Attachment: 2309 Diana-Mana Hanalei Development Agreement [Revision 3] (2582 : Adopt Ordinance 2309 - Diana-Mana Hanalei DA

EXHIBIT B
DESCRIPTION OF PROJECT

***RDCS APPLICATION NO. RDCS2017-0015: DIANA-HANALEI FOR A
RESIDENTIAL DEVELOPMENT PROJECT THAT SUBDIVIDES THE PROJECT SITE
INTO 24 RESIDENTIAL LOTS AND INCLUDES DEVELOPMENT OF 24 NEW
SINGLE-FAMILY RESIDENCES, PUBLIC ACCESS ROADS, AND A PRIVATE PARK.***

Attachment: 2309 Diana-Mana Hanalei Development Agreement [Revision 3] (2582 : Adopt Ordinance 2309 - Diana-Mana Hanalei DA

EXHIBIT B

-1-

EXHIBIT C
SPECIFIC RESTRICTIONS AND REQUIREMENTS
(INCLUDING RDCS REQUIREMENTS)

The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.	Schools			
4.	Student Transportation Improvements	Applicant shall contribute \$5000 per unit to contribute to the City's Safe Access to Schools Fund to be used to construct physical improvements to enhance safe student access to MHUSD Schools.	Prior to the issuance of building permit	\$5,000 per unit
3.	Affordable Housing			
2.	Voluntary Contribution to Housing Fund	Project commits to contributing to the City's Affordable Housing Fund at a rate of 110 percent of baseline contribution. Total Livable Area: 62,100 square feet Per square foot fee: \$ 19.70 Baseline fee: \$ 1,223,370.00 (total) 10 percent additional fee: \$ 122,337.00 110 percent Fee: \$1,345,707.00 Baseline fee per unit: \$56,071.12	Inclusionary Housing Agreement required 60 days following Development Agreement approval	\$1,345,707.00 voluntary contribution based on estimated in-lieu fee for project.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.	Housing Diversity			
2.	Diversity of Housing Types	The project shall provide at least 10% of the 3 different housing types (duet, SFD single story, and SFD multi story). 6 units will be duets, 12 units will be SFD single story, and 6 units will be SFD multi story.	Prior to Design Review Permit approval	N/A
3.	Variation in Housing Size	The projects variation between largest and smallest units is at least 35% (each floor plan varies by 200 square feet) The project consists of 4 housing sizes.	Prior to Design Review Permit approval	N/A
6.	Single-Story Homes	The project shall build at least 50% (12 units) single story units.	Prior to Design Review Permit approval	N/A
5.	Parks and Open Space			
1.	Park Fund Contribution	In addition to standard park impact fees, project shall pay \$2,000 per unit.	Prior to building permit issuance	\$2,000 per unit
2.	Excess Park Land	Project shall provide a minimum of 10% more dedicated open space that the minimum level mandated by the Municipal Code.	Prior to Design Review Permit approval	N/A
5.	Agricultural Preservation or Open Space Fund Contribution	In addition to standard fees, project shall contribute to single unit rate per unit to the agricultural preservation and open space fund. This fee adjusts annually.	Prior to building permit issuance	Fee to be determined at time of payment
6.	On-Site Recreational Amenities	Project shall provide: a horseshoe pit, a passive recreation area and/or garden, and a tot lot with a minimum of three age appropriate activities.	Prior to Design Review Permit approval	N/A
7.	Amenities for Age Group	Project shall provide a tot lot (children)	Prior to Design Review Permit	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		and BBQ area (adults).	approval	
10.	Open Space Design	The size of the park shall be 10% larger than the size required by the Municipal Code; fences shall surround the open space for edges; landscaping shall be enhanced and a total of 5 different amenities shall be offered within the park well beyond the minimum.	Prior to Design Review Permit approval	N/A
6.	Environmental Protection			
1.	Energy Efficiency	The project shall exceed the minimum building energy efficiency requirement by the California Energy Code by 15 percent.	Prior to issuance of building permit	N/A
4.a	Natural Turf	Less than 50 percent of the landscaped area shall contain natural turf.	Prior to issuance of building permit	N/A
4.d	Exceeds Outdoor Water Efficiency 20%	Project shall exceed outdoor water efficiency standards by 20%.	Prior to issuance of building permit	N/A
4.e	Exceeds Outdoor Water Efficiency 30%	Project shall exceed outdoor water efficiency standards by 30%.	Prior to issuance of building permit	N/A
5.	Sustainable Site and Building Design	The project commits to score 108 points or 19 points over the minimum 89 points required by the City of Morgan Hill Municipal Code.	Prior to the issuance of building permit	N/A
7.	Transportation			
3.	Off-Site Street and Parking Improvements or Fund Contribution	The project shall fund off-site street roadway and/or parking improvements that are outside of the project boundaries in the amount of \$3,000 per unit. Improvements to be determined by City Engineer.	Prior to issuance of building permit	\$3,000 per unit

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.a	Transportation Demand Management fund	The project shall contribute \$2,000 per unit to the City's transportation fund to be used to provide city-wide TDM programs	Prior to issuance of building permit	\$2,000 per unit
5.a	Aligns and connects streets	The project shall align and connect streets intersecting the project boundary with all adjoining streets.	Prior to Design Review Permit approval	N/A
5.b	Extends Streets	The project shall extend streets to adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	Prior to Design Review Permit approval	N/A
5.c	Off-street bicycle and pedestrian connections	The project shall provide detached sidewalks offering a shorter connection from surrounding neighborhoods to adjacent destinations including parks, open space, transit facilities and commercial areas.	Prior to Design Review Permit approval	N/A
6.a	Complete Streets	The project shall incorporate "complete streets" that will meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities as required by the City Engineer.	Prior to Design Review Permit approval	N/a
6.c	Direct pedestrian connections	The project shall provide direct pedestrian connections from all units to common open space, recreational facilities, and other project amenities.	Prior to Design Review Permit approval	N/A
6.d	Neighborhood traffic management techniques	The project shall incorporate a variety of neighborhood traffic management techniques, such as a knuckle and bulbout designed to City standards, to control vehicle speeds and increase the	Prior to Design Review Permit approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		safety of bicycle and pedestrian travel.		
8.	Municipal Infrastructure			
3.a	Reduces off-site storm water flows	The project shall reduce the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	Prior to issuance of building permit	N/A
4.	Infrastructure and Services Fund Contribution	The project shall contribute \$3,000 per unit to the City's infrastructure and Services Fund.	Prior to issuance of building permit	\$3,000 per unit
5.a	Installs broadband conduit in public right-of-way	The project shall install broadband conduit in the public right-of way along the project frontages.	Prior to issuance of building permit	N/A
5.b	Installs broadband conduit to home/buildings	The project shall install broadband conduit from the public right-of-way to each home within the project.	Prior to issuance of building permit	N/A
5.c	Pre-installs indoor conduit	The project shall pre-install indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	Prior to issuance of building permit	N/A
9.	Project Quality			
1.a	Front Porches	The criteria requires that a minimum of 50 percent of homes facing a street or common interior courtyard include a front porch that is part of the home's primary entrance. The porch is required to be a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard. Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.d	Façade Articulation and Finishes	Project shall demonstrate compliance	Prior to Design	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		with the stated criteria.	Review Permit approval	
1.e	360-degree Architecture	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.f	Corner Treatments	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.g	Colors and Materials	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.a	Entrance Orientation-Collector and Residential Streets	The majority of the project is creating streets (not facing existing streets or collectors); however, 3 homes are facing along Diana Avenue, the existing collector. Due to the narrowness of the lot, the project has maximized the number of lots that can face Diana Avenue. The project shall comply with the stated criteria.	Prior to Design Review Permit approval	N/A
2.c	Variation in Building Height	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.d	Variation in Building Placement	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.e	Roof Line Variation	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.f	Upper Floor Setback-Detached Homes	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
			approval	
3.b	Landscaping-Visual Relief	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.c	Exterior Lighting	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.d	Entrance Pathways	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.e	Public/Private Transitions	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.f	Mechanical Equipment	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.b	Garage Door Design-Minimizing Visual Dominance	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.c	Garage Door Design-Detailing	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.h	Setback Areas	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.i	Pavement Design	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
5.	Public Art	The applicant shall provide \$3,000 per unit for public art.	Prior to issuance of building permit	\$3,000 per unit

EXHIBIT C

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CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

ADOPT ORDINANCE 2310 AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2310, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2019 Strategic Priorities
Economic Development

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

On December 4, 2019, the City Council introduced Ordinance No. 2310 New Series, by the following roll call vote: AYES: McKay, Spring, Constantine; NOES: Martinez Beltran; ABSTAIN: Carr; ABSENT: None.

The City's existing zoning regulations limit the ability for these often-older facilities to increase their sales areas. In some cases, business owners have lost the opportunity for significant reinvestment in these aging buildings due to current regulations thereby not maximizing sales tax revenue. In order to accommodate the current market standard size of convenience markets, the separation restriction would need to be removed or modified. Also, updated definitions for convenience markets, convenience markets with fuel service stations, and liquor stores should be updated to provide clarity for planning staff and applicants.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the proposed ordinance on November 12, 2019.

The Planning Commission voted in favor of recommending the proposed ordinance to the City Council with a 4-3 vote, with the following amendments:

- 1) Add language to section 18.92.030.D (Restrooms and Automotive Services) that restrooms be “well-lit and made safe”. The following language was added to the proposed amendment in section 18.92.032.C.1 “and shall comply with the lighting and crime prevention measures in Section E of this section.”
- 2) Add language to section 18.124.040.P.8 (Liquor Store definition) that this type of land use requires a “Type 21” license from the Alcoholic Beverage Commission (ABC). This language was added to the attached proposed amendment.

In addition, two Planning Commission members requested the Morgan Hill Unified School District be contacted to evaluate whether they see a need for keeping the 1,000-foot separation distance between a convenience market and/or liquor store and a school. Concerns from the Planning Commission members who voted no included the following issues:

1. Questions were raised as to whether the definitions created loopholes where a business with 45% liquor sales qualified as a convenience store rather than a liquor store. The reference to a Type 21 license (sale of distilled spirits) was inserted to respond to the concern.
2. Concerns that the distance requirements from schools for convenience markets and convenience markets with a fuel and service station were an unnecessary encumbrance on businesses trying to operate in the City of Morgan Hill. Notably, no business owners have contacted city staff requesting a change to this distance separation requirement.

Following the Planning Commission meeting on November 12, 2019, the Morgan Hill Unified School District was contacted for their input on the 1,000-foot separation requirement from schools. The school district specially requested the 1,000-foot separation requirement be maintained as a minimum distance. This distance requirement applies to new businesses, not existing liquor/convenience stores.

Further research was completed regarding ABC distance restrictions between school and convenience establishments that hold an alcoholic beverage sales license. According to ABC, they may deny any retail license in the following locations:

- (a) within the immediate vicinity of churches and hospitals, or
- (b) within at least 600 feet of schools, public playgrounds, and nonprofit youth facilities.

Generally, ABC will deny a license in the above situations when there is evidence that normal operation of the licensed premises will be contrary to public welfare and morals. Mere proximity by itself is not sufficient to deny the license.

A review of best practices from other municipalities in Santa Clara County shows that standard distance separation between a school and retail location that sells alcoholic beverages is between 500-1,000 feet.

Staff recommends no change to the existing 1,000-foot separation requirement between school and convenience markets or liquor stores. Staff also recommends the City Council approve the amended ordinance as recommended by the Planning Commission.

COMMUNITY ENGAGEMENT: Inform and Consult

Staff has reached out to other cities in Santa Clara County to understand best practices. Additionally, staff reached out to the Mothers Against Drunk Drivers (MADD), the Police Department, the Morgan Hill Chamber of Commerce and Alcoholic Beverage Control (ABC). The Police Department did not have any objections to the ordinance as proposed, as their main concern was that the separation requirement remains in place for liquor stores. The Morgan Hill Chamber of Commerce is supportive of this proposed amendment. MADD has been contacted regarding this proposed amendment and has not provided any feedback. ABC provided information that Morgan Hill is no longer a “moratorium city” for type 20 licenses. However, they did not provide a statement of support or opposition for this proposed amendment.

A 10-day public hearing notice was published in the Friday, November 22, 2019 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the City of Morgan Hill website and via social media.

PRIOR COUNCIL/COMMISSION ACTIONS:

On April 9, 2019, Economic Development Director Edith Ramirez and Economic Development Manager John Lang conducted a workshop with the Planning Commission regarding the Convenience Market Ordinance. Input was also received from current business owners, members of the public, and the Morgan Hill Chamber of Commerce. The Planning Commission directed staff to develop amendments to the Municipal Code that regulates convenience markets with the intention to individually define liquor store and convenience market uses.

On November 18, 2019, the Planning Commission voted in favor of recommending the proposed ordinance to the City Council with a 4-3 vote.

At the December 4, 2019 City Council meeting the ordinance was introduced.

FISCAL AND RESOURCE IMPACT:

At the present time, it is unknown the amount of potential sales tax revenue that may be generated from convenience markets expanding their retail sales areas. There may be

potential for expanded revenues, however it is not possible to determine the amount that may be received as many factors will determine this amount.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendment to the Morgan Hill Zoning Code is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Any development that occurs in the future subject to such standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. Ordinance 2310 Convenience Markets

ORDINANCE NO. 2310, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. The Retail Uses and Vehicle-Related Uses sections in Section 18.24.020 (Land Use Regulations) Of Chapter 18.24 (Commercial Zoning Districts) of Title 18 (Zoning) are hereby amended to read as follows:

18.24.020 - Land use regulations.

A. Permitted Land Uses. Table 18.24-1 identifies land uses permitted in the commercial zoning districts.

Table 18.24-1 Permitted Land Uses in the Commercial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CO	CN	CG	CH	CS	
Retail Uses						
Convenience Markets	—	C	C	C	C	
Convenience Market with Fuel and Service Station	—	C	C	C	C	

General Retail	—	P	P	P	C	
Home Improvement Centers	—	—	P	—	P	
Liquor Store	—	C	C	C	C	
Large Commodity Retail	—	—	C	—	C	
Vehicle-Related Uses						
Convenience Market with Fuel and Service Station	—	C	C	C	C	
Fuel and Service Stations	—	C	C	C	C	
Towing and Impound	—	—	—	—	C	
Vehicle Rentals	—	C [2]	C [2]	P	P	
Vehicle Repair and Maintenance, Minor	—	—	C	—	P	
Vehicle Sales and Leasing	—	C [1]	C [1]	P	P	
Vehicle Washing	—	C	C	C	C	

Section 2. Section 18.92.030 (Convenience Markets) of Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) is hereby amended to read as follows:

18.92.030 - Convenience markets.

A. Purpose. This section establishes standards for convenience markets in order to:

1. Ensure the compatibility of convenience markets with neighboring commercial and residential land uses;
2. Minimize potential negative impacts from convenience markets on adjacent land uses; and
3. Require new convenience markets to incorporate crime prevention measures to protect the public health, safety, and welfare.

- B. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.
- C. Loiter Control.
 - 1. Public pay telephones on an exterior wall of the convenience market or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
 - 2. Video games may not be installed or operated on the premises of the convenience market.
 - 3. The police department may require additional loiter control measures as conditions of approval for the convenience market conditional use permit.
- D. Crime Prevention Measures.
 - 1. The exterior of the convenience market shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.
 - 2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.
 - 3. The police department may require additional crime prevention measures as conditions of approval for the convenience market conditional use permit.
 - 4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.
- E. Sale of Alcoholic Beverages
 - 1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.
 - 2. No display or sale of alcoholic beverages shall be made from an ice tub.
 - 3. No alcoholic beverage advertising shall be located on buildings or windows.
 - 4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

Section 3. Sections 18.92.031 (Liquor Store) and 18.92.032 (Convenience Markets with Fuel and Service Stations) is hereby added to Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) to read as follows:

18.92.031 – Liquor Store

A. Purpose. This section establishes standards for liquor stores in order to:

1. Ensure the compatibility, concentration of liquor stores with neighboring commercial and residential land uses;
2. Minimize potential negative impacts from liquor stores on adjacent land uses; and
3. Require new liquor stores to incorporate crime prevention measures to protect the public health, safety, and welfare.

B. Separation Between liquor stores.

1. A new liquor store shall be located a minimum of one thousand feet from an existing or approved liquor store except as allowed by Paragraph 2 below. The distance between liquor stores shall be measured as the straight-line distance between the exterior walls of the market structures.
2. The city may allow exceptions to the separation requirement in Paragraph 1 above for one liquor store (regardless of size) per interchange on property adjacent to the interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and

C. Separation from Schools. A new liquor store shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.

D. Loiter Control.

1. Public pay telephones on an exterior wall of the liquor store or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
2. Video games may not be installed or operated on the premises of the liquor store.
3. The police department may require additional loiter control measures as conditions of approval for the liquor store conditional use permit.

E. Crime Prevention Measures.

1. The exterior of the liquor store shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the liquor store. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.
2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.

3. The police department may require additional crime prevention measures as conditions of approval for the liquor store conditional use permit.
4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

18.92.032 - Convenience Markets with Fuel and Service Stations

- A. Purpose. This section establishes standards for convenience markets which also have fuel and service stations, as described in Section 18.124.040 Q. 1., in order to:
 1. Ensure the compatibility, concentration of convenience markets with fuel and service stations with neighboring commercial and residential land uses;
 2. Minimize potential negative impacts from convenience markets with fuel and service stations on adjacent land uses; and
 3. Require new convenience markets with fuel and service stations to incorporate crime prevention measures to protect the public health, safety, and welfare.
- B. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.
- C. Restrooms. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:
 1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view and shall comply with the lighting and crime prevention measures in Section E of this section.
 2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.
- D. Loiter Control.
 1. Public pay telephones on an exterior wall of the convenience market fuel and service stations or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
 2. Video games may not be installed or operated on the premises of the convenience market with fuel and service stations.
 3. The police department may require additional loiter control measures as conditions of approval for the convenience market with fuel and service stations conditional use permit.
- E. Crime Prevention Measures.

1. The exterior of the convenience market with fuel and service stations shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.
 2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.
 3. The police department may require additional crime prevention measures as conditions of approval for the convenience market with fuel and service stations conditional use permit.
 4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.
- F. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market with fuel and service stations use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:
1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.
 2. No display or sale of alcoholic beverages shall be made from an ice tub.
 3. No alcoholic beverage advertising shall be located on fuel pump islands and no self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
 4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.
- G. A Liquor Store with a fuel and service station is not a permitted use.
- H. Parking
1. For convenience markets permitted prior to January 1, 2019, the planning commission may consider a reduction in on-site parking as set forth in section 18.72.060.K. Any reductions in on-site parking requires planning commission approval through a conditional use permit.

Section 4. Subsection P (Retail) of Section 18.124.040 (Commercial Uses) Of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

P. Retail.

1. Building Materials. An establishment engaged in the retail sale of lumber and other building materials primarily to contractors and home builders.

2. Convenience Markets. A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood, and fresh produce products.
3. Convenience Market with Fuel and Service Station. A retail business establishment that meets the combined definitions of Convenience Markets (See section 18.124.040.P.2) and Fuel and Service Stations (See Section 18.124.040.Q.1).
4. General Retail. Stores and shops selling merchandise to the general public. Includes grocery stores, specialty food markets, drug stores, general merchandise stores, department stores, clothing stores, pet stores, small hardware stores, cellular phone sales and service, florists, arts and crafts galleries, and other similar retail establishments. Excludes "building materials," "convenience markets," "home improvement centers," and "large commodity retail."
5. Goods Produced On-Site. A retail establishment selling goods produced by a related on-site manufacturing use.
6. Home Improvement Centers. A retail establishment which carries a full line of building materials, appurtenances, and decorator items primarily for homeowners (not contractors) to improve and maintain individual dwellings. Excludes building supply yards and lumberyards for contractors and home builders (see "building materials").
7. Large Commodity Retail. A retail use where more than seventy-five percent of the gross floor area is used for display, sales, and related storage of bulky commodities, and which typically generate a demand for fewer parking spaces than do other types of retail uses. Includes retail sale of carpeting and floor covering; catalog and mail order sales; construction equipment and machinery; garden and farm equipment; heating, ventilating, air conditioning, and other mechanical equipment and supplies; kitchen, bathroom and plumbing appliances, equipment, and supplies; lumber and building materials; office furniture, equipment, and machinery, including computers; and household furniture.
8. Liquor Store. A retail establishment, having a Type 21 (Off-Sale General) license issued through the Alcoholic Beverage Control, and where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages (which includes beer, wine, and distilled spirits) for off-premises consumption

Section 5. 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 6. Effective Date; Posting. This Ordinance shall take effect on January 19, 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF DECEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICHARD CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2310, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of December 2019.

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

DATE: _____

 IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

ADOPT ORDINANCE 2311 NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.64 ("TOBACCO RETAILER'S LICENSE") OF TITLE 5 ("BUSINESS LICENSES GENERALLY") OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING TOBACCO RETAILER'S LICENSE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2311, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Community Engagement and Messaging

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On December 4, 2019, the City Council introduced Ordinance No. 2311 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

Staff recommends adoption of the proposed ordinance prohibiting the sale of flavored tobacco and e-cigarette products. The proposed ordinance would ban the sale of all flavored tobacco products in the City. Flavored tobacco products are defined in the ordinance using the phrase, "imparts a Characterizing Flavor." A "Characterizing Flavor" is defined as a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product. This includes, but is not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice. No exemption is recommended for menthol cigarettes. The ban on flavored tobacco products would apply to all businesses selling tobacco products, regardless of location in the City. As proposed, the ordinance would not apply to full-sized cigars or pipe tobacco.

COMMUNITY ENGAGEMENT:

Staff has individually contacted the retail stores in Morgan Hill that generate either all or most of their income from the sale of flavored tobacco and/or e-cigarette products. The business owners unanimously opposed any ordinance prohibiting the sale of flavored tobacco or e-cigarettes. In the alternative, they suggested limiting sales of flavored tobacco and e-cigarettes to adult only stores.

Several community groups were contacted regarding this ordinance. Staff met with the Chamber of Commerce, Morgan Hill Unified School District, Santa Clara County Department of Public Health, American Cancer Society, and the American Lung Association.

ALTERNATIVE ACTIONS:

The City Council could choose to only prohibit flavored tobacco products or only prohibit e-cigarettes and related products.

The City Council could choose to adopt the County's model ordinance and transfer enforcement to the County. This would require additional steps, including entering into an MOU with the county, which would be completed after introduction of the ordinance.

PRIOR CITY COUNCIL ACTIONS:

On October 2nd, 2019, City Attorney Donald Larkin provided a presentation to the City Council regarding regulation of flavored tobacco products. The City Council provided direction to prepare an ordinance regulating flavored tobacco products, including vape products, and to engage in appropriate outreach efforts regarding the proposed regulation. The ordinance was introduced at the December 4, 2019 City Council meeting.

FISCAL IMPACT:

Sales tax information is only available by business and is not broken-down by products sold. Therefore, it is not possible to determine the total amount of sales tax dollars received by the City from the sale of tobacco and related products. Information is available for businesses that primarily sell tobacco and related products. During the previous fiscal year, the City received approximately \$22,500 in total sales tax revenue from the five retail stores in Morgan Hill that generate all or the majority of their income from flavored tobacco and/or e-cigarette products.

CEQA (California Environmental Quality Act):

The adoption of the ordinance will not constitute a CEQA project in and of itself. These are purely organizational or administrative activities of local governing bodies that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2311 Flavored Tobacco & Vaping product ban

ORDINANCE NO. 2311, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING CHAPTER 5.64
("TOBACCO RETAILER'S LICENSE") OF TITLE 5
("BUSINESS LICENSES GENERALLY") OF THE
MUNICIPAL CODE OF THE CITY OF MORGAN HILL
REGULATING TOBACCO RETAILER'S LICENSE**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:

SECTION 1: Chapter 5.64 (Tobacco Retailer's License) is hereby amended to read as follows:

5.64.010 - Purpose.

This chapter is intended to set forth a local license process for tobacco retailers to ensure that retailers comply with tobacco control laws and city business standards to protect the public health, safety and welfare, and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to minors. This chapter is not intended to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

(Ord. No. 2199 N.S., § 1, 5-18-2016)

5.64.020 - Definitions.

- A. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:
1. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.
 2. "City" means the City of Morgan Hill and each of its officers and employees designated to enforce or administer the provisions of this chapter.
 3. "Licensee" means a tobacco retailer or their authorized representative and/or employee with a valid tobacco retailer's license.
 4. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

5. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.
6. "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
7. "Smoking" means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, electronic cigarette, or cigarette of any kind) and means the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, electronic cigarette, or cigarette of any kind).
8. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
9. "Tobacco product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
10. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, and "tobacco retailing" shall mean the doing of any of these activities. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.
11. "Electronic cigarette" product means any of the following products:
 - (1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
 - (2) Any component, part, or accessory of such a device or delivery system that is used during its operation.
 - (3) Any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.

(4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.

(5) Electronic cigarette products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic cigarette products shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

6) “Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

7) “Characterizing flavor” means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma or both, as described in this definition, that constitutes a characterizing flavor.

8) “Pipe tobacco” means a loose-leaf tobacco product burned in a traditional smoking pipe with a bowl.

9) “Cigar” means any roll of tobacco, other than a cigarette, wrapped entirely or in part in tobacco or any substance containing tobacco and typically containing at least one-half ounce of aged fermented tobacco.

- B. Any reference in this chapter to a specific state or federal statute or municipal code provision shall be construed to mean that state or federal statute or municipal code provision as may be amended from time to time.

5.64.030 - Tobacco retailer's license required.

It shall be unlawful for any person to act as a tobacco retailer in the city without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

5.64.040 - Operating regulations and prohibitions.

Every person engaged in tobacco retailing activities shall comply with each and every provision set forth below:

- A. Location. Tobacco retailing activities shall be conducted at a fixed location and within the enclosed area of the tenant space completely accessible to the general public during the hours of business operation.
- B. Display of license. Each tobacco retailer's license shall be prominently displayed in a publicly visible location at the licensed location.
- C. Minimum age for persons selling tobacco. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.
- D. Minimum age for the purchase of tobacco. No person engaged in tobacco retailing shall sell or transfer tobacco product or tobacco paraphernalia to a person whose legal age is under minimum age established by state law for the purchase or possession of tobacco products.
- E. Positive identification required. Persons engaged in tobacco retailing may not sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess a tobacco product or tobacco paraphernalia.
- F. Compliance with the City of Morgan Hill's Smoking Pollution Control Regulations. Persons engaged in tobacco retailing shall ensure that the tobacco retailing activities comport with Morgan Hill Municipal Code Chapter 8.44, Title 8, titled "Smoking Pollution Control".
- G. Self-service displays prohibited. Tobacco retailing by means of a self-service display is prohibited.
- H. License nontransferable. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever the proprietor(s) of a tobacco retailing location change.
- I. Lawful business operation. In the course of tobacco retailing or in the operation of the business or maintenance of the premises for which a tobacco retailer's license is issued, it shall be a violation of this chapter for any tobacco retailer or any tobacco retailer's agent or employee to violate any federal, state, or local law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.
- J. Sale of flavored tobacco products prohibited.
 1. It shall be a violation of this section for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.

2. There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored tobacco products, including but not limited to individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

3. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer:

a. makes or disseminates a public statement or claim to the effect that the tobacco product imparts a characterizing flavor;

b. uses text and/or images on the tobacco product's labeling or packaging that explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor;

c. uses text or images on the tobacco product's labeling or packaging that uses descriptive terms such as "sweet" or "spicy" that refer to or imply a characterizing flavor; or

d. has taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

4. No licensed tobacco retailer that is issued a new permit after January 1, 2020 shall sell, offer for sale, or possess with intent to sell any flavored tobacco products. No licensed tobacco retailer shall sell, offer for sale, or possess with intent to sell any flavored tobacco products after March 31, 2020.

5. This section is not intended to prohibit the sale of products that meet the definition of "cigar" or "pipe tobacco".

K. Sale of electronic cigarette products prohibited.

1. It shall be a violation of this section for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any electronic cigarette product.

2. No licensed tobacco retailer that is issued a new permit after January 1, 2020 shall sell, offer for sale, or possess with intent to sell any electronic cigarette product. No licensed tobacco retailer shall sell, offer for sale, or possess with intent to sell electronic cigarette product after March 31, 2020.

5.64.050 - Application procedure; unlawfully providing false information.

- A. It shall be unlawful for any person to supply inaccurate or false information on a tobacco retailer's license application.
- B. All applications shall be submitted on a form supplied by the City of Morgan Hill Finance Department, shall be accompanied by payment in full of the license fee, and shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor of the business seeking a license;
 - 2. The business name, address, and telephone number of the single fixed location for which a license is sought;
 - 3. A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above;
 - 4. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization;
 - 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years;
 - 6. Such other information as the city deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section;
 - 7. Any person applying for a tobacco retailer's license pursuant to this chapter agrees to fully indemnify, defend and hold harmless the city, its officers, employees and agents for all claims, losses, or liabilities that arise out of the issuance or use of the tobacco products or tobacco paraphernalia; and
 - 8. The application shall be signed by each proprietor or an authorized agent thereof.
- C. A licensed tobacco retailer shall inform the city in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.
- D. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

5.64.060 - Issuance of license.

Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the city shall issue a tobacco retailer's license, except as otherwise provided in this chapter. A tobacco retailer's license shall not be issued if substantial evidence demonstrates to city that one or more of the following exists:

- A. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
- B. The application seeks authorization for tobacco retailing at a location for which a tobacco retailer license has been denied pursuant to this chapter. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the city with documentation demonstrating, by clear and convincing evidence, that the applicant has acquired or is acquiring the location or business in an arm's length transaction, and is not associated with the previous applicant in any way;
- C. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or
- D. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to the Morgan Hill Municipal Code, or that is unlawful pursuant to any other law.

5.64.070 - License renewal and expiration.

- A. Each tobacco retailer's license issued pursuant to this chapter shall expire on June 30 of each year, subject to suspension or revocation as provided in this chapter.
- B. Renewal of license. Each tobacco retailer shall renew their tobacco retailer's license and submit the license fee prior to July 1 of each year. A tobacco retailer's license is invalid if the term of the license has expired and the license was not timely renewed, and the appropriate fee was not paid.
- C. Expiration of license. A tobacco retailer's license not timely renewed shall expire on June 30 of each year to renew a license not timely renewed pursuant to subparagraph (A), the proprietor must:
 - 1. Submit the license fee and application renewal form; and,
 - 2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed.

5.64.080 - Fee for license.

- A. Each tobacco retailer who applies for or holds a tobacco retailer's license shall pay all associated fees in the amounts established by the city council. Fees are nonrefundable except as may be required by law.
- B. The fee to issue or renew a tobacco retailer's license shall be established from time to time by the city council.
- C. No tobacco retailer's licensee shall be issued or renewed prior to the full payment of any applicable fees.
- D. Licenses renewed after July 31 of each year shall be assessed a ten percent penalty and licenses renewed after August 31 of each year shall be assessed an additional fifteen percent penalty.

5.64.090 - License conveys a limited, conditional privilege.

- A. Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the city identified on the face of the license.
- B. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including but not limited to, any provision of this code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.

5.64.100 - Compliance monitoring.

- A. The Morgan Hill Police Department and Finance Department shall have primary responsibility for monitoring compliance with this chapter. Any peace officer may enforce the penal provisions of this chapter. The city may designate any number of additional persons to monitor compliance with this chapter.
- B. Inspections may be conducted so as to allow the city to determine, at a minimum, if a tobacco retailer is conducting business in a manner that complies with laws regulating youth access to tobacco products and paraphernalia.
- C. The city shall not enforce any law establishing a minimum age for tobacco purchasers or possession against a purchaser of tobacco that otherwise might be in violation of such law because of the person's age if the potential violation occurs when:
 - 1. The purchaser (hereinafter referred to as "youth decoy") is participating in a compliance check supervised by a peace officer or a code enforcement official of the city;
 - 2. The youth decoy is acting as an agent of a person designated by the city to monitor compliance with this chapter; or
 - 3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Santa Clara County Department of Health or the California Department of Health Services.

5.64.110 - Tobacco retailing without a license.

- A. In addition to any other penalty authorized by law, if a court or hearing officer of competent jurisdiction determines that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailing license as follows:
 - 1. After a second violation of retailing without a license at a location within any sixty-month period, no tobacco retailer license shall be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until one calendar year has passed from the date of the second violation;

2. After a third or subsequent violation of this section at a location within any sixty-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until five calendar years have passed from the date of the most recent violation.
- B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
 1. The location has been fully transferred to a new proprietor(s); and
 2. The new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction and are not associated with the prior proprietor(s) in any way.

5.64.120 - False and misleading advertising prohibited.

It shall be unlawful for a tobacco retailer without a valid tobacco retailer license or whose license has been revoked to:

- A. Keep tobacco products and tobacco paraphernalia within public view.
- B. Display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

5.64.130 - Penalties and enforcement.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained, in any part, through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- C. It is unlawful for any person to violate Section 5.64.040(D).
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- E. Violations of this chapter are hereby declared to be public nuisances pursuant to Morgan Hill Municipal Code. Any nuisance may be abated as provided in Chapter 1.18 of the Morgan Hill Municipal Code.

5.64.140 - Suspension or revocation of a tobacco retailer's license, or forfeiture of seized tobacco and tobacco paraphernalia.

- A. In addition to any other penalty authorized by law, the city may suspend or revoke a tobacco retailer's license on the grounds set forth in this section after the licensee has been afforded notice and an opportunity to be heard, consistent with the hearing procedures set

forth in Morgan Hill Municipal Code Sections 1.19.060 through 1.19.100, inclusive. If, after the passage of fifteen (15) calendar days from the mailing or personal delivery of the notice, the licensee has not requested a hearing, the suspension, revocation, or forfeiture shall become final. Any suspended or revoked tobacco retailer's license shall be surrendered to the city and all operations covered by such license shall cease once the suspension or revocation becomes final.

1. A tobacco retailer's license may be suspended or revoked on one or more of the following grounds:
 - a. A tobacco retailer's license was issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information;
 - b. One or more of the bases for denial of a license pursuant to this chapter existed at the time application was made or at any time before the license issued; and/or
 - c. A court or hearing officer of competent jurisdiction has determined that a licensee has violated a provision of this chapter.
- B. For violations of Section 5.64.040(D), the city shall have the additional authority:
 1. Upon a finding by the city of a first violation of Section 5.64.040(D) at a location within a sixty-month period, the license shall be subject to suspension for thirty days.
 2. Upon a finding by the city of a second violation of Section 5.64.040(D) at a location within a sixty-month period, the license shall be subject to suspension for ninety days.
 3. Upon a finding by the city of a third violation of Section 5.64.040(D) at a location within a sixty (60) month period, the license shall be subject to suspension for one (1) year.
 4. Upon a finding by the city of a fourth violation of Section 5.64.040(D) at a location within a sixty-month period, the license shall be subject to revocation.
- C. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this chapter are subject to seizure by the city or any peace officer and shall be forfeited after the person, the person's agents or employees, or any other owner of the tobacco products and tobacco paraphernalia seized is given reasonable notice and an opportunity, consistent with the hearing procedures set forth in Morgan Hill Municipal Code Sections 1.19.060 through 1.19.100, inclusive, to demonstrate that the tobacco products and tobacco paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the city is final and is subject to judicial review pursuant to Morgan Hill Municipal Code Section 1.19.125. Forfeited tobacco products and tobacco paraphernalia may be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

5.64.150 - Appeal.

- A. Pursuant to the provisions of Chapter 1.20 of the Morgan Hill Municipal Code, the licensee can appeal a decision of the city to suspend and/or revoke a tobacco retailer's license.

Compliance with the procedures set forth in Section 5.64.140 shall be deemed to fulfill the procedural requirement of Section 1.20.020.

5.64.160 - New license after revocation.

- A. After first revocation at a location within any sixty-month period, no new license may be issued for the location until one calendar year has passed from the date of revocation.
- B. After second or more revocations at a location within any sixty-month period, no new license may be issued for the location until five calendar years days have passed from the date of the most recent revocation.

5.64.170 - Nondiscrimination.

No person shall discharge, refuse to hire, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

Section 2. 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 3. Effective Date; Posting. This Ordinance shall take effect on January 19, 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF DECEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICHARD CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2311, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of December 2019.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

ADOPT ORDINANCE 2312, NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE TRANSFER OF 11 ALLOTMENTS FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT AND A DEVELOPMENT AGREEMENT AMENDMENT AAE2019-0010 (DAA2018-0002): E. DUNNE-YOUNG (ANDALUSIA) TO INCORPORATE 26 BUILDING ALLOTMENTS INTO THE APPROVED DEVELOPMENT AGREEMENT FOR THE 46-UNIT ANDALUSIA DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2312, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2019 Strategic Priorities

Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On December 4, 2019, the City Council introduced Ordinance No. 2312 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

The proposed Development Agreement amendment would modify the Development Agreement to incorporate 15, FY 2020-21, On-Going residential building allotments and incorporate 11, FY 2020-21 transferred allotments from RDCS2019-0005: Monterey-Lucky Shing. The proposed Development Agreement amendment is mutually agreed to by the City and the applicant and is consistent with the criteria specified within Chapter IV. RDCS Implementation Policies, Section M of the RDCS Competition Manual. It is recommended the City Council adopt the attached ordinance approving an amendment to the Development Agreement for the Andalusia project.

COMMUNITY ENGAGEMENT: Public notice of the development agreement amendment request was mailed to property owners within 300 feet of the project and notice was published in the November 22 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS: Deny the development agreement amendment exempting the remaining 26-units from the 2017 RDCS requirements.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council affirmed the award of 20, FY 2019-20 allotments in June 2018, to the 46-unit Andalusia project.

Tentative Subdivision Map was approved by the Planning Commission in November of 2018.

On January 23, 2019, City Council adopted the Development Agreement via ordinance.

On July 23, 2019, the Planning Commission awarded the project 15 on-going residential building allotments for FY 2020-21.

On September 4, 2019, the City Council approved Resolution No. 19-044, reaffirming the distribution of the RDCS allotments for FY 2020-21.

On November 12, 2019 the Planning Commission considered this current development agreement amendment and transfer request and unanimously recommended City Council approval.

The ordinance was introduced at the December 4, 2019 City Council meeting.

FISCAL AND RESOURCE IMPACT:

Application filing fees were paid by the applicant to cover the staff time required to process the development agreement amendment request.

In addition to paying user and impact fees, the project will make public benefit contributions of approximately \$11,000/per unit to City's Safe Access to Schools Fund, Agricultural Preservation and Open Space Fund, and other off-site storm water improvements.

California Environmental Quality Act (CEQA):

A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program were approved in 2018 as part of the project entitlements. No further environmental analysis is required.

LINKS/ATTACHMENTS:

1. 2312 E. Dunne Young Amendment to DA

ORDINANCE NO. 2312 NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE TRANSFER OF 11 ALLOTMENTS FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT AND A DEVELOPMENT AGREEMENT AMENDMENT AAE2019-0010 (DAA2018-0002): E. DUNNE-YOUNG (ANDALUSIA) TO INCORPORATE 26 BUILDING ALLOTMENTS INTO THE APPROVED DEVELOPMENT AGREEMENT FOR THE 46-UNIT ANDALUSIA DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. On June 20, 2018, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, the City Council reaffirmed the Planning Commission's award of 20 building allotments to application RDCS 2017-0012: E. Dunne-Young (Andalusia) (FY2019-2020).

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter binding Development Agreements, and to amend said agreements, with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. On January 23, 2019, the City Council adopted Ordinance No. 2294 which approved a Development Agreement for RDCS2017-0012: E. Dunne-Young.

SECTION 4. On September 4, 2019, the City Council, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, reaffirmed the Planning Commission RDCS award of allotments, affirming the 15 ongoing allotments for Andalusia and 24 building allotments for RDCS 2019-0005: Monterey-Lucky Shing (Manzanita Park) FY2020-2021.

SECTION 5. Section M of Chapter IV "RDCS Implementation Policies" of the RDCS Competition Manual authorizes the transfer of fiscal year allotments between and within project in order to expedite the completion of projects awarded allotments under the RDCS.

SECTION 6. The applicant is requesting a transfer of 11 of the 24 building allotments awarded to RDCS2019-0005: Monterey-Lucky Shing to the Andalusia project and is further requesting an amendment to the Development Agreement to incorporate 15 on-going building allotments and 11 of the 24 building allotments to be transferred from RDCS2019-0005: Monterey-Lucky Shing.

SECTION 7. The Development Agreement amendment and transfer of allotments request was considered by the Planning Commission at its regular meeting of November 12, 2019 at which time the Planning Commission recommended to City Council the approval of the amendment to the Development Agreement (DAA2018-0002): E. Dunne-Young (Andalusia);

SECTION 8. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 9. The City Council hereby approves the transfer of 11 allotments from RDCS 2019-0005: Monterey- Lucky Shing to RDCS 2017-0012: E. Dunne-Young as the request meets the following criteria as specified by Section M “Transfer of Allotments” of Chapter IV “RDCS Implementation Policies” of the RDCS Competition Manual:

- a. **The receiving project has sufficient lead time to exercise the transferred allotment prior to the deadline.**

The E. Dunne-Young project is fully entitled as follows:

- Tentative Map SD2018-0004: November 27, 2018
- Development Agreement DA2018-0002: January 23, 2019
- Site Review SR2018-0020: February 28, 2019

The E. Dunne-Young project submitted master plans for building permits on October 14, 2018.

The FY 2020-21 allotments must be exercised by March 4, 2022 (within 30 months of approval). Considering the progress of the project, there would be sufficient time to exercise the RDCS allotments.

- b. **The transfer may apply to partially allotted and fully allotted projects.**

Both projects involved in the transfer are partially allotted.

- c. **Both on-going and recently allotted first time projects may transfer allotments.**

RDCS2017-0012: E. Dunne-Young is considered an on-going project and RDCS 2019-0005: Monterey-Lucky Shing is a recently allotted first time project.

SECTION 10. The Development Agreement Amendment 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 a total of 46 multi-family residential units. The project is consistent with the General Plan land use designation and the provisions of RDCS. The proposed Development Agreement Amendment request will not alter the project’s consistency with the General Plan and will further implement the provisions of the RDCS through the public benefit commitments. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 11. The Development Agreement Amendment is compatible with the uses authorized in the zoning district in which the property is located.

The proposed residential use is permitted within the Residential Attached Low (RAL) zoning district and would be compatible with the surrounding residential uses.

SECTION 12. The Development Agreement Amendment complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is subject to CEQA and an Initial Study/Mitigated Negative Declaration has been prepared and adopted for the project. No further environmental analysis is required.

SECTION 13. The Development Agreement Amendment will not adversely affect the orderly development of property or the preservation of property values.

SECTION 14. The Development Agreement Amendment 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.

The project's construction would adhere to state, local and federal laws. The project is residential apartments that would include the normal daily operations of other residential sites.

SECTION 15. Authority is hereby granted for the City Manager to execute the amendment approved by the City Council by this ordinance.

SECTION 16. Severability. If any part of this ordinance is held to be 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 17. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF DECEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TOREZ, City Clerk

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2312, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of December 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2312 E. Dunne Young Amendment to DA (2594 : Adopt Ordinance 2312 E. Dunne Young)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

ADOPT ORDINANCE 2313, NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.84 (ACCESSORY DWELLING UNITS) AND SECTION 18.124.020 (RESIDENTIAL LAND USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2313, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On December 4, 2019, the City Council introduced Ordinance No. 2313 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

On October 9, 2019, Governor Gavin Newsom signed Assembly Bill 68, Assembly Bill 881, and Senate Bill 13, which amend Government Code Sections 65852.2 and 65852.22 and the Health and Safety Code regarding accessory dwelling units (ADU) and junior accessory dwelling units. All bills are effective January 1, 2020. The Bills make major changes to the ADU statute to facilitate the development of more ADUs and address perceived barriers to ADUs. Therefore, the amendments to Chapter 18.84 (Accessory Dwelling Units) and Chapter 18.124 (Land Use Definitions) of the Morgan

Hill Municipal Code are intended to align with the changes made in State law (Government Code Sections 65852.2 and 65852.22) regarding accessory dwelling units and junior accessory dwelling units.

COMMUNITY ENGAGEMENT: Inform

A 10-day public hearing notice was published in the Friday, November 22, 2019 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and via social media. On November 18, 2019, the Planning Commission held a public hearing regarding the proposed zoning amendment. A 10-day public hearing notice was published in the Friday, November 8, 2019 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

If the City Council does not take action, Chapter 18.84 – Accessory Dwelling Units will not be in accordance with Government Code Sections 65852.2 and 65852.22, and therefore, if an application for a permit to create an Accessory Dwelling Unit is received by the City, the City shall approve or disapprove the application ministerially without discretionary review pursuant to Government Code Subdivision 65852.2(a). The City shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit with 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the City acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the City has not acted upon the completed application within 60 days, the application shall be deemed approved.

By not taking action, the City could not:

1. Enforce or limit a maximum unit size for Accessory Dwelling Units except for limiting an attached accessory dwelling unit to 50 percent of the existing primary dwelling;
2. Enforce a height restriction of 16-feet within a reduced side or rear setback; or
3. Restrict short term rentals within accessory units.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018 – City Council adopted Ordinance No. 2277, New Series, approving the first comprehensive update of Title 18 – Zoning of the City's Municipal Code since 1981. Ordinance No. 2277, N.S. became effective on July 7, 2018. The comprehensive update of Title 18 – Zoning included Chapter 18.84 – Accessory Dwelling Units, which replaced Chapter 18.55 – Secondary Dwelling Units, which was last updated in 2010.

On November 18, 2019 – Planning Commission considered and recommended, unanimously, the City Council approve the proposed Zoning Amendment.

The ordinance was introduced at the December 4, 2019 City Council meeting.

FISCAL AND RESOURCE IMPACT:

This amendment is a direct result of recent legislative changes in the State laws for which the cost is borne and work is accommodated within the Planning Division's annual workplan and budget.

CEQA (California Environmental Quality Act):

This Ordinance is categorically exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendments are covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments are changes to the requirements of Accessory Dwelling Units and Junior Accessory Dwelling Units contained within the Municipal Code as required by State Law pursuant to the amendments made by Assembly Bill 68, Assembly Bill 881 and Senate Bill 13 and will not result in any direct impact upon the physical environment. Any development that occurs in the future subject to such standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. 2313 Accessory Dwelling Units

ORDINANCE NO. 2313, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.84 (ACCESSORY DWELLING UNITS) AND SECTION 18.124.020 (RESIDENTIAL LAND USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) is hereby amended to read as follows:

Chapter 18.84 - ACCESSORY DWELLING UNITS

18.84.010 - Purpose.

This chapter establishes standards for the location and construction of accessory dwelling units and junior accessory dwelling units (jointly referred to ‘accessory units’ in this Chapter) in conformance with Government Code Sections 65852.2 and 65852.22, respectively. These standards are intended to allow for accessory units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods in Morgan Hill, and to comply with State law.

18.84.020 - Permits required.

- A. Accessory units consistent with the requirements of this chapter are allowed by-right with the issuance of a Building Permit.
- B. Time Limit to Act. The city shall complete its review of an accessory unit application requiring a Building Permit and approve or deny the application within sixty days after receiving an application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the accessory until the City acts on the permit application to create the new single-family dwelling. The application to create the accessory unit shall be considered without discretionary review or hearing.

18.84.030 - Permitted zoning districts.

Accessory dwelling units are permitted in any zoning district where single-family or multi-family dwellings are a permitted land use as identified in Part 2 (Zoning Districts and Overlay Zones) of the zoning code. Junior accessory dwelling units are permitted in any zoning district where single-family dwellings are a permitted land use as identified in Part 2 (Zoning Districts and Overlay Zones) of the zoning code.

18.84.050 - Site and design standards.

- A. General. Accessory units are subject to the same requirements that apply to primary dwellings on the same lot in the applicable zoning district except as specified in this section.
- B. Number of Accessory Units. No more than one accessory dwelling unit and no more than one junior accessory dwelling unit is permitted on a single lot with a single-family dwelling. Multifamily dwelling structures may have no more than one accessory dwelling unit or up to 25% of the existing multi-family dwelling units, whichever is larger.
- C. Relationship to Primary Dwelling.
 1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof. No passageway (as defined in Government Code Section 65852.2) is required in conjunction with the construction of an accessory dwelling unit.
 2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
 3. The city shall allow junior accessory dwelling units as defined in Government Code Section 65852.22 to be constructed within the walls of the proposed or existing single-family residence with a separate entrance from the main entrance to the primary dwelling, an efficiency kitchen (consisting of a cooking facility with appliances, a food preparation counter and storage cabinets) and shared or independent bathroom facilities.
 4. The accessory unit shall be clearly subordinate to the primary dwelling by size, appearance, and location on the parcel and shall comply with all applicable building and safety codes.
- D. Maximum Unit Size.
 1. Table 18.84-1 identifies the maximum floor area for detached and attached accessory dwelling units.

Table 18.84-1: Maximum Accessory Dwelling Unit Floor Area

Zoning District	Maximum Floor Area
-----------------	--------------------

RE 10	1,200 sq. ft. ¹
RE 2.5	1,000 sq. ft. ¹
RE 1	900 sq. ft. (1 Bedroom) 1000 sq. ft. (2 or more Bedrooms) ¹
All other zoning districts	850 sq. ft. (1 Bedroom) 1000 sq. ft. (2 or more Bedrooms) ¹

¹ An attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

2. The maximum floor area of junior accessory dwelling units shall be 500 square feet.

E. Property Line Setbacks.

1. No setback is required for an existing accessory structure or living area as defined by Government Code Section 65852.2 that is converted to an accessory dwelling unit.
2. No setback is required for an accessory dwelling unit constructed in the same location and the same footprint as an existing accessory structure.
3. A minimum setback of four feet from the side and rear property lines is required for an accessory dwelling unit 16-feet in height or less. An accessory dwelling unit in excess of 16-feet shall comply with setback requirements of the applicable zoning district.

F. Parking.

1. On-site parking spaces is not required for junior accessory dwelling units.
2. Except as specified in this subsection, on-site parking for accessory dwelling units shall comply with all parking requirements in Chapter 18.72 (Parking and Loading).
3. In addition to on-site parking spaces required for the primary dwelling unit, one on-site parking spaces shall be provided for each accessory dwelling unit per unit or bedroom, whichever is less.
3. On-site parking spaces for accessory dwelling units may be covered or uncovered and may be located within the front, side or rear setback areas (may be tandem).
4. No off-street parking is required for an accessory dwelling unit in the following cases:
 - a. The accessory dwelling unit is located within one-half mile walking distance of public transit.

- b. The accessory dwelling unit is located within a National Register Historic District or other historic district officially designated by the city council.
 - c. When an accessory dwelling unit is constructed within the primary residence or an accessory structure.
 - d. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - e. When there is a car share vehicle pick-up/drop-off location within one block of the accessory dwelling unit.
- 5. When an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, , or converted to an accessory dwelling unit, the on-site parking spaces are not required to be replaced.
- G. Design. The design of accessory units shall be compatible with the design and scale of the primary dwelling (using substantially the same landscaping, color, materials and design on the exterior) and the general character of the neighboring residential properties.
- H. Doors and Windows. Openings (e.g., doors and windows) on exterior walls that are closest to and face adjacent residentially-zoned properties shall be designed to minimize privacy impacts and maintain access to light and ventilation on adjacent properties.
- I. Utility Connections.
 - 1. General. An accessory unit shall not be considered a new residential use for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service unless constructed in conjunction with a new single-family residence.
 - 2. Accessory Units in Existing Space. For accessory units within an existing primary dwelling, garage, or other accessory structure, the city shall not require an applicant to install a new or separate utility connection directly between the accessory unit and the utility or impose a related connection fee or capacity charge.
 - 3. Attached and Detached Accessory Dwelling Units.

Consistent with Government Code Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
 - 4. Fire Sprinklers. The installation of fire sprinklers shall not be required in an accessory unit if sprinklers are not required for the primary residence.
- J. Septic Tank Disposal System.
 - 1. In areas where septic tank disposal systems are allowed due to lack of sanitary sewer lines, detached accessory dwelling units shall be served by separate and independent septic tank sewage disposal systems. All leach lines shall be designed and installed in

accordance with current septic system requirements of the Santa Clara County Environmental Health Services.

2. In other areas of the city, accessory dwelling units shall be connected to the sanitary sewer system through the existing lateral line serving the primary dwelling unit.

18.84.060 - Deed restrictions.

- A. Deed Restriction Required. Before obtaining a building permit for an accessory unit, the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current owner. The deed restriction shall state that:
 1. The accessory unit may not be sold separately from the primary dwelling.
 2. The accessory unit is restricted to the approved size as set forth in Section 18.84.050 (D).
 3. The accessory unit shall not be rented for a period of less than 30 days.
- B. Binding on Future Owners. The above declarations shall be binding upon any successor in ownership of the property. Lack of compliance shall be cause for code enforcement and/or revoking the city's approval of the accessory unit.

18.84.070 – Fees

- A. Impact fees shall not be imposed on an accessory dwelling unit less than 750 square feet in size.
- B. Impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

Section 2. Subsection A of Section 18.124.020 (Residential Land Uses) of Chapter 18.04 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

A. Accessory Dwelling Units. A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on the parcel, that includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling or multifamily dwelling is situated. This includes an efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home, as defined in Section 18007 of the Health and Safety Code. Further includes a Junior Accessory Dwelling Unit which is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence and includes separate or shared sanitation facilities with the existing structure.

Section 3. **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 4. Effective Date; Posting. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 4th DAY OF DECEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TOREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2313, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of December 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2313 Accessory Dwelling Units (2595 : Adopt Ordinance 2313 Accessory Dwelling Units)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

RESCIND ORDINANCE NO. 2131 NEW SERIES IN RESPONSE TO REFERENDUM CHALLENGING ZONING AMENDMENT FOR A PARCEL LOCATED ON THE NORTHEAST CORNER OF MADRONE PARKWAY AND LIGHTPOST WAY (APN 726-33-026)

RECOMMENDATION(S)

Rescind Ordinance No. 2131 in response to the referendum petition submitted by the Morgan Hill Hotel Coalition.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

In November 2014, the City Council amended the General Plan designation for the property at 850 Lightpost Way from Industrial to Commercial. The purpose of this amendment was to allow the development of a new hotel on the site.

In April 2015, the City Council adopted Ordinance No. 2131 N.S. (Attachment 1), rezoning the site to General Commercial, which would allow the hotel to develop.

Following adoption of the zoning amendment, several competing hotels sponsored a referendum, challenging the adoption of the ordinance. On May 1, 2015, the Morgan Hill Hotel Coalition submitted its petition, which contained sufficient signatures to qualify for referendum.

Under then existing case law (*deBottari v. City of Norco* (1985) 171 Cal.App.3d 1204), a zoning ordinance that was enacted to conform to the General Plan was not subject to referendum. Based on that law, the City initially refused to act on the referendum. Later, the City Council voted to place the referendum on the ballot, but the City then sued to have the referendum removed from the ballot.

In March 2016, the trial court ordered the referendum of Ordinance No. 2131 removed from the November 2016 ballot. The Hotel Coalition appealed the trial court ruling, which was overturned first by the 6th District Court of Appeal. In August 2018, the California Supreme Court issued an opinion overturning *deBottari* and remanding the case back to the trial court for further proceedings (Attachment 2).

Rather than continue litigating the case, staff now recommends that the City Council rescind Ordinance No. 2131 N.S. This will prohibit the site from being rezoned to commercial for a period of one year but will allow the property to be developed as industrial if that is preferable to the property owner.

Permitted uses under the current zoning include:

- Adult businesses,
- Business support services,
- Vehicle repair and maintenance,
- Wholesaling,
- Construction and material yards,
- Food and beverage production,
- Manufacturing,
- Plant nurseries,
- Professional offices,
- Research and development,
- Warehousing and distribution, and
- Fleet services.

Other industrial uses may be permitted with a use permit, including:

- Colleges and trade schools,
- Community assembly,
- Animal boarding and/or veterinary services,
- Commercial recreation,
- Mini-storage,
- Retail home improvement centers,
- Big box retail, and
- Recycling center.

See Section 18.26.020 for more detailed information.

COMMUNITY ENGAGEMENT: Not Applicable

This action is recommended in order to comply with a decision of the California Supreme Court.

ALTERNATIVE ACTIONS:

The City Council could choose to submit the referendum to the voters at the November 2020 general municipal election.

If the City Council takes no action, the referendum will automatically be submitted to the voters in November 2020.

FISCAL AND RESOURCE IMPACT:

There will be no direct fiscal or resource impact from staff's recommendation. The City has already lost significant revenue opportunities from the loss of the planned Hilton Garden Inn hotel. However, the opportunity to develop this site as a hotel has already passed.

CEQA (California Environmental Quality Act):

Not a Project.

This is an action to maintain the status quo, which will not have a reasonably foreseeable impact on the environment.

LINKS/ATTACHMENTS:

1. Ordinance 2131 (web link)
2. Court Opinion

Filed 8/23/18

IN THE SUPREME COURT OF CALIFORNIA

CITY OF MORGAN HILL,	)	
	)	
Plaintiff and Respondent,	)	
	)	S243042
v.	)	
	)	Ct.App. 6 H043426
SHANNON BUSHEY, as Registrar of	)	
Voters, etc., et al.,	)	
	)	Santa Clara County
Defendants and Respondents;	)	Super. Ct. No. 16-CV-292595
	)	
	)	
RIVER PARK HOSPITALITY, INC.,	)	
	)	
Real Party in Interest and	)	
Respondent;	)	
	)	
MORGAN HILL HOTEL COALITION,	)	
	)	
Real Party in Interest and	)	
Appellant.	)	
	)	

This case is about how to reconcile state land use law with the people’s referendum power. To promote public deliberation and reasoned decisions about land use, state law requires cities and counties to develop general land use plans that function as charters for all future land use in that county or city. Government Code section 65860, subdivision (a)¹ requires zoning ordinances to “be consistent

¹ All subsequent statutory references are to the Government Code unless otherwise specified.

with the general plan of the county or city.” This provision renders invalid any change to the zoning ordinance that would make it inconsistent with the general plan, whether the change is made by a local government or a local initiative. (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544 (*Leshar*).) But local residents can use the power of initiative or referendum guaranteed to them by the California Constitution for a range of functions relevant to land use, including to alter the general plan for their municipality. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 777-784 (*DeVita*).) When the general plan is amended without also changing the corresponding zoning ordinance, the county or city must amend the zoning ordinance within a “reasonable time” to make it consistent with the general plan. (§ 65860, subd. (c).) The question we must resolve is whether the people of a county or city may challenge by referendum a zoning ordinance amendment that would bring the ordinance into compliance with a change to the county’s or city’s general plan, even though such a referendum would temporarily leave in place a zoning ordinance that does not comply with the general plan.

What we conclude is that the people of a county or city can challenge such a zoning ordinance by referendum, at least where the local government has other means available to make the zoning ordinance and general plan consistent. Section 65860, subdivision (c) contemplates some temporary inconsistency between the zoning ordinance and the general plan for a “reasonable time” when the general plan is modified. A referendum simply keeps that inconsistency in place for a certain time — until the local government can make the zoning ordinance and general plan consistent in a manner acceptable to a majority of voters. The Court of Appeal correctly held that a referendum can invalidate a zoning ordinance amendment approved by a local jurisdiction to achieve compliance with a general plan amendment, where other general-plan-compliant

zoning designations are available that would be consistent with a successful referendum. In such a case, the local jurisdiction would likely be able to change the zoning ordinance to comply with the general plan and the referendum within a reasonable time.

But in this case, it is not clear whether the city can use other available zoning designations for the disputed property that would be consistent with the general plan and a successful referendum. If no current zoning designations consistent with the general plan are available for the local jurisdiction to comply with a successful referendum, the referendum is still valid if the local jurisdiction can create new zoning designations that attain such consistency. And the local jurisdiction may have other means to achieve consistency between the zoning ordinance and general plan after a referendum — such as by altering the general plan — that would prevent the removal of the referendum from the ballot. So we vacate the judgment of the Court of Appeal and direct it to remand the case to the trial court so it can address these issues.

I.

In November 2014, Plaintiff and Respondent City of Morgan Hill (the “City”) amended its general plan. The City did so to change the land use designation of a vacant lot located at 850 Lightpost Parkway (the “property”) from “Industrial” to “Commercial.” Real Party in Interest River Park Hospitality, Inc. (“River Park”) owns the property. River Park’s stated purpose in rezoning the property was to develop a hotel. The specific zoning designation of the property — “ML-Light Industrial” — remained unchanged by the alteration to the general plan.

In April 2015, after public hearings on amending the zoning ordinance, the City’s city council approved the zoning ordinance. This ordinance sought to change the parcel’s zoning designation to “CG-General Commercial.” According

to the parties, this is one of twelve potential commercial zoning designations in Morgan Hill. On May 1, 2015, Real Party in Interest Morgan Hill Hotel Coalition (“Hotel Coalition”) — supported by over 4,000 signatures — petitioned for a referendum challenging the ordinance. The City Clerk issued a certificate of examination and sufficiency for the referendum on May 15, 2015, and five days later, the city council enacted a resolution accepting the certificate.

But in July 2015, the city council directed the City Clerk to discontinue processing the referendum because it “would enact zoning that was inconsistent with” the City’s general plan. On January 13, 2016, in reaction to the discontinuance of the referendum, Hotel Coalition filed a petition for writ of mandate (in a different suit than the one at issue here) seeking to force a repeal of the City’s zoning ordinance, or a vote on the referendum. That case was still pending when the trial court made its decision in the instant case, after which the parties settled the January 13, 2016, case.

Shortly thereafter, on February 17, 2016, the city council reviewed reports on alternatives for the property. Hotel Coalition suggested the City change the zoning designation to one that is consistent with the general plan and does not permit hotel use, or that it alter the general plan.

On March 2, 2016, the city council again placed the referendum on the ballot in a special municipal election scheduled for June 7, 2016. At the same time, the city council authorized legal action to remove the referendum from the ballot. A few weeks later, the City filed suit against Shannon Bushey, the Registrar of Voters for Santa Clara County, and Irma Torrez, the City Clerk for Morgan Hill, for an alternative and peremptory writ and declaratory relief to remove the referendum from the ballot and certify the zoning ordinance. On March 29, 2016, the trial court ordered the referendum removed from the ballot. In reaching its conclusion, the trial court relied on *deBottari v. City of Norco*

(1985) 171 Cal.App.3d 1204, 1212 (*deBottari*) — which held that such a referendum would “enact” an invalid zoning ordinance that is inconsistent with the general plan. Hotel Coalition promptly appealed.

The Court of Appeal reversed the trial court. (*City of Morgan Hill v. Bushey* (2017) 12 Cal.App.5th 34, 43 (*City of Morgan Hill*).) It expressly disagreed with *deBottari*’s holding that referendums are always invalid if they reject a zoning ordinance enacted by the local government to bring a property’s zoning into compliance with the jurisdiction’s general plan. (*Ibid.*) In cases where multiple available zoning designations could comply with the general plan, the Court of Appeal below held that a referendum rejecting the zoning change was acceptable because the City could adopt another zoning designation that would be consistent with the general plan within a “reasonable time.” (*City of Morgan Hill*, at p. 43, quoting § 65860, subd. (c).) We granted review to determine whether the people can bring a referendum to challenge an amendment to a property’s zoning where a prior general plan amendment rendered the property’s zoning inconsistent with the general plan and the challenged zoning amendment seeks to make the property’s zoning consistent with the amended general plan.

II.

California’s legislative power is vested in its Legislature. But the people have “reserve[d] to themselves the powers of initiative and referendum.” (Cal. Const., art. IV, § 1.) The referendum power allows the public to approve or reject statutes or parts of statutes. (*Id.*, art. II, § 9, subd. (a).) This power “may be exercised by the electors of each city or county under procedures that the Legislature shall provide,” thereby granting to these electors the power to approve or reject local ordinances. (*Id.*, § 11, subd. (a).) Our duty is to “ ‘jealously guard’ ” the referendum and initiative powers, and to liberally construe those powers so that they “ ‘be not improperly annulled.’ ” (*Associated Home Builders*

etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591; see also *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 936 (*California Cannabis*) [“[W]e resolve doubts about the scope of the initiative power in its favor whenever possible [citation], and we narrowly construe provisions that would burden or limit the exercise of that power”].)

People in counties and cities may also use their referendum and initiative powers to alter local government policy — subject to limited preemption by the state Legislature. (*DeVita, supra*, 9 Cal.4th at pp. 775-777.) The Legislature may engage in such preemption only if it acts within its constitutionally granted authority to legislate on issues of “statewide concern.” (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 779 [“the Legislature may restrict the right of referendum if this is done as part of the exercise of its plenary power to legislate in matters of statewide concern”].) We only find local application of the public’s power of referendum or initiative preempted if there is a “definite indication” or a “ ‘clear showing’ ” that it was within the ambit of the Legislature’s purpose to restrict those rights. (*DeVita*, at p. 775-776; *id.* at p. 775 [“ ‘[W]e will presume, absent a clear showing of the Legislature’s intent to the contrary, that legislative decisions of a city council or board of supervisors . . . are subject to initiative and referendum’ ”].) Such a “definite indication” exists, for example, where the state Legislature limits the local legislative body’s discretion such that its task is “administrative” rather than “legislative” (*id.* at p. 776; *id.* at p. 775 [“the local electorate’s right to initiative and referendum . . . is generally co-extensive with the legislative power of the local governing body”]) or delegates legislative authority exclusively to the local legislative body (see *id.* at pp. 776-777, citing *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 511-512 (*Committee of Seven Thousand*)).

Although zoning and general plans implicate local concerns and are often addressed by local governments, these arrangements also raise issues of “statewide concern.” (*DeVita, supra*, 9 Cal.4th at p. 784.) So the Legislature has the constitutional power to enact laws limiting local government power over land use. (See *DeVita*, at pp. 772-773, 776, 784; see also *Leshner, supra*, 52 Cal.3d at p. 544; *Committee of Seven Thousand, supra*, 45 Cal.3d at pp. 510-512.) The Planning and Zoning Law of the State of California (§ 65000 et seq.) is an example: it requires every county and city in California to adopt a general plan. (*Leshner*, at p. 535.) A general plan sets a county’s or city’s development policies and objectives, and must contain a “land use element” that “designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, . . . public buildings and grounds, solid and liquid waste disposal facilities, greenways, . . . and other categories of public and private uses of land.” (§ 65302, subd. (a).)

By initiative, local governments or members of the public may alter a general plan, including its land use elements. (*DeVita, supra*, 9 Cal.4th at pp. 775, 777-784.) While a given general plan is in effect, neither local governments nor electors can enact a zoning ordinance inconsistent with it. Section 65860, subdivision (a) provides that “[c]ounty or city zoning ordinances shall be consistent with the general plan of the county or city” (§ 65860, subd. (a).) In *Leshner*, we held that this provision preempts any local zoning ordinance that is inconsistent with the general plan when enacted, and that an ordinance passed by initiative is no exception. (See *Leshner, supra*, 52 Cal.3d at p. 544.) Any such inconsistent zoning ordinance “is invalid at the time it is passed.” (*Ibid.*; see also *id.* at p. 545 [also describing such zoning ordinances as “invalid *ab initio*,” that is, invalid from the start].)

Nonetheless, a local zoning ordinance may temporarily differ from the general plan following a *general plan* amendment. The Government Code favors simultaneous modification of the general plan and the relevant zoning provisions. (§ 65862 [“It is the intent of the Legislature, in enacting this section, that local agencies shall, to the extent possible, concurrently process applications for general plan amendments and zoning changes which are needed to permit development so as to expedite processing of such applications”].) But this preference is not a requirement. (See *ibid.* [requiring the concurrent processing of general plan amendments and zoning changes “to the extent possible”].) So section 65860, subdivision (c) governs in circumstances where the zoning ordinance “becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan.” (§ 65860, subd. (c).) In such circumstances, “the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.” (*Ibid.*) This provision only applies to “zoning ordinances which were valid when enacted,” that is, were enacted before the general plan amendment and were consistent with the prior general plan. (*Leshner, supra*, 52 Cal.3d at p. 546.) The purpose of subdivision (c) “is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan.” (*Ibid.*)

The core question here is whether the state Legislature preempted local electors’ power to challenge by referendum a local government ordinance — one aligning the relevant zoning designations with the amended general plan. Hotel Coalition contends that the local electors can exercise their referendum power without conflicting with section 65860, subdivision (a), at least where the local government could have chosen to comply with the general plan through *other* zoning designations. (See *City of Morgan Hill, supra*, 12 Cal.App.5th at p. 43;

Save Lafayette v. City of Lafayette (2018) 20 Cal.App.5th 657, 664-669 [following *City of Morgan Hill*'s reasoning].) The City and River Park argue such a referendum is invalid, because it is effectively the same as an initiative causing the zoning ordinance to conflict with the general plan. (See *deBottari, supra*, 171 Cal.App.3d at p. 1212; see also *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 874-879 [following *deBottari*].)

We disagree with the City and River Park. What we conclude is that the people of a local municipality may indeed challenge by referendum a zoning ordinance amendment that changes a property's zoning designation to comply with a general plan amendment, at least where other consistent zoning options are available, or the local municipality has the power to make the zoning ordinance and general plan consistent through other means. A referendum is not impermissible — and its result is not null — simply because, if approved by the voters, it forces some change to a local government action taken to align zoning with the general plan currently in force. Section 65860, subdivision (c)'s exception to subdivision (a) governs circumstances where the zoning ordinance must be amended in response to changes to the general plan. (See § 65860, subd. (c) [applying where “the zoning ordinance shall be amended . . . so that it is consistent with the general plan as amended”].) A referendum challenging an amendment to the zoning ordinance does not result in the final imposition of an invalid zoning designation to the property preempted by section 65860, subdivision (a), at least where a county or city can use other means to bring consistency to the zoning ordinance and the general plan. (But see *Leshner, supra*, 52 Cal.3d at p. 544 [holding that § 65860, subd. (a) preempts a zoning ordinance inconsistent with the general plan].)

Instead, a successful referendum in such circumstances prevents the local government from changing the previously existing zoning designation for the

property — notwithstanding its noncompliance with the amended general plan. It does so without vitiating the City’s duty to make the zoning ordinance and general plan consistent with one another. (See § 65860, subd. (c) [stating that the “zoning ordinance shall be amended” to comply with the amended general plan].) Section 65860, subdivision (c) allows out-of-compliance zoning for a “reasonable time” while the local legislative body seeks to amend the zoning ordinance because the original designation was “valid when enacted” (*Leshner, supra*, 52 Cal.3d at p. 546). This exception to subdivision (a)’s prohibition does not dissolve merely because a local government tried and failed on its first attempt to apply a particular zoning designation to a piece of property.

The City and River Park argue that a referendum does more than merely prevent change of the noncompliant zoning ordinance. They construe it instead as an affirmative action that “repeals” the amending ordinance, which thus “revives” the out-of-compliance zoning designation. We disagree. Under article II, section 9 of the California Constitution, the referendum power is “the power of the electors to *approve or reject* statutes.” (Cal. Const., art. II, § 9, subd. (a), italics added.) Electors in counties and cities have the same power to approve or reject ordinances. (*Id.*, § 11, subd. (a).) Rather than “reviving” an inconsistent zoning ordinance, a successful referendum is merely the rejection of an amendment before it takes effect — there is no revival of the out-of-compliance zoning designation because it was never eliminated.

A review of the procedures governing local referendums demonstrates why. To bring a referendum, those opposing the ordinance must submit a petition

signed by at least 10 percent of the voters of the city² protesting the adoption of the ordinance within 30 days of the date the ordinance “is attested” to being properly enacted by the legislative body. (Elec. Code, § 9237; *id.*, § 9242 [requiring submission of the petition “within 30 days from the date of the adoption of the ordinance to which it relates”]; see also *id.*, § 9144 [requiring, for county referendums, that the petition be filed before the ordinance’s effective date].) The effective date of most ordinances, with limited exceptions, must be “30 days from and after the date of . . . final passage” of the ordinance. (*Id.*, § 9235; see also *id.*, § 9141, subd. (b) [same for county ordinances].) If a petition with sufficient signatures is filed within the time limit, “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance.” (*Id.*, § 9237.) If the legislature does not “entirely repeal the ordinance against which the petition is filed,” the legislative body must submit the ordinance to the voters at a general election or a special election. (*Id.*, § 9241.) The Elections Code conveys that “[t]he ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it.” (*Ibid.*)

These provisions best fit a straightforward interpretation of what happens when electors use a referendum to reject a statute enacted by the Legislature. To wit: the referendum does not revive a superseded statute. Instead, it rejects a statutory alteration before it becomes law. (See Elec. Code, § 9241; *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 656 (*Deukmejian*) [“As the Secretary of State has pointed out, ‘In a REFERENDUM, VOTERS are asked to APPROVE the BILL which the Legislature has enacted (“YES” VOTE) or to DISAPPROVE (“NO”

² In a city with 1,000 or less registered voters, at least 25 percent of the population or 100 people, whichever is fewer, must sign the petition. (Elec. Code, § 9237.)

VOTE) The question which is put to the voters is “SHALL (the bill) BECOME LAW? (YES or NO).” ’ (Memo. from Sect. of State’s office to county clerks and registrars of voters (Sept. 24, 1981).) Approval of the referendum is approval of the bill”].) In the same way, because a zoning ordinance is “stayed from taking effect until it has been approved by the voters at the required election” (*Deukmejian*, at p. 656; Elec. Code § 9237), a referendum does not work a change in the zoning ordinance. It prevents such a change from occurring.

Moreover, we find no sign that it was the Legislature’s purpose to prevent electors from using their referendum power against objectionable zoning ordinance alterations. The Legislature was in a position to be well aware of the local referendum power when it added subdivision (c) to section 65860 in 1973. (Stats. 1973, ch. 120, § 6.) The power of referendum was added to the California Constitution in 1911 (*Associated Home Builders etc., Inc. v. City of Livermore*, *supra*, 18 Cal.3d at p. 591), and the statutory predecessors to the current provisions governing city referendums are to a great extent similar to what they were in 1973 (see, e.g., Elec. Code, former § 4052 [now Elec. Code, § 9241]; Stats. 1969, ch. 940, § 14, p. 1881). So we can presume the Legislature added this provision against the backdrop of knowledge that local referendums might be used to challenge zoning ordinance amendments that involve discretionary choices between different options. (See *People v. Pieters* (1991) 52 Cal.3d 894, 907 [“we presume that the Legislature has knowledge of all prior laws and enacts and amends statutes in light of those laws”].)

The situation here also contrasts with prior cases. This case does not involve a “clear showing” that the Legislature contemplated preemption of local electors’ referendum power. This situation is not one where state law mandates a certain result with no discretion or that involves an “administrative” task. (See *Simpson v. Hite* (1950) 36 Cal.2d 125, 133-135 [finding referendum power

unavailable to challenge a statute requiring the board of supervisors to find suitable accommodation for state courts]; *Housing Authority of City of Eureka v. Superior Court in and for Humboldt County* (1950) 35 Cal.2d 550, 553, 558 [holding local approval of public housing agency's application for a federal loan to be an administrative action].) Where the local government can still implement one of multiple approaches to achieve consistency between the zoning ordinance and the general plan while complying with section 65860, subdivision (c), the zoning ordinance is best understood as the product of a discretionary policy choice about the proper use of the land. Nor is this a case where the state statute gives discretion solely to the legislative body, to the exclusion of the electors. (See *Committee of Seven Thousand, supra*, 45 Cal.3d at pp. 511-512.)

Indeed, section 65860, subdivision (c) imposes a mandate that the zoning ordinance be made consistent with the general plan. But it conspicuously fails to specify who decides how that consistency is achieved. Without evidence of a contrary purpose, we presume it was not within the ambit of the Legislature's goals to exclude electors from the zoning ordinance amendment process. (See *DeVita, supra*, 9 Cal.4th at p. 775 [“ ‘[W]e will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors . . . are subject to initiative and referendum’ ”].) We have previously observed that the purpose of section 65860, subdivision (c) “is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan.” (*Leshner, supra*, 52 Cal.3d at p. 546.) We see no reason why an orderly process in this vein must categorically exclude a referendum.

That such an “orderly process” can encompass use of a referendum becomes even clearer when we compare its use here to other situations. Consider, for example, a vote in a local jurisdiction's legislative body that goes against a

particular zoning ordinance amendment, or a mayor's veto of such an ordinance if the city has granted the mayor such power. (See *Referendum Committee v. City of Hermosa Beach* (1986) 184 Cal.App.3d 152, 157 ["The referendum process allows the voters to *veto* statutes and ordinances enacted by their elected legislative bodies before those laws become effective" (italics added)].) Nothing in section 65860 indicates that members of a municipality's legislative body must vote for a particular zoning ordinance amendment. Indeed, the ordinance in this case garnered two dissenting votes. Nor is there any indication that a "mayor's veto" would be ineffective in blocking a zoning ordinance amendment. A legislative body, a vetoing mayor, or electors — by referendum — can properly prevent the selection of one general-plan-compliant zoning ordinance when others are available.

To hold otherwise would eviscerate local electors' referendum power. The City and River Park argue local electors could have challenged the prior alterations to the general plan by referendum, or changed the general plan or the zoning ordinance by initiative (so long as the zoning ordinance matches the general plan). Although these alternative options provide some avenue for relief, a referendum can play an important and distinct role — as it does in this case. A change to the general plan may in many cases reveal mere generalities, consigning to relative ignorance local electors unaware of the City's plans for the property. And electors may agree with a general plan modification, but not the particular zoning amendment used to conform to the general plan. So the ability to bring a referendum to challenge a general plan amendment may not always make up for the lack of availability of a referendum challenging a later, more specific zoning ordinance amendment. Unlike an initiative, which acts as standalone legislation to repeal the already enacted zoning ordinance amendment, a referendum petition satisfying the statutory prerequisites suspends the effective date of the challenged

zoning ordinance amendment until a majority of voters approve the amendment. (Elec. Code, §§ 9237, 9241.) As a result, a piece of property may undergo development, or legal rights may vest in development of the property before an initiative can be brought to a vote. Given these considerations, construing section 65860, subdivision (c) to contemplate referendum challenges avoids unduly cramping the referendum power and implicitly restricting its relevance. (Cf. *California Cannabis, supra*, 3 Cal.5th at p. 936 [holding that we must resolve doubts about the initiative power in its favor and “narrowly construe provisions that would burden or limit the exercise of that power”].)

These considerations lead us to disapprove of the reasoning in *deBottari v. City of Norco, supra*, 171 Cal.App.3d 1204 and *City of Irvine v. Irvine Citizens Against Overdevelopment, supra*, 25 Cal.App.4th 868. In *deBottari*, the Court of Appeal held a referendum rejecting a zoning ordinance to be invalid *ab initio* because the voters did not have the power to “enact an invalid zoning ordinance” even if other zoning designations not obviated by the referendum could comply with the general plan. (*deBottari*, at p. 1212.) What the *deBottari* court misapprehended is why certain ordinances are invalid “*ab initio*.” An initiative or city council measure rendering a zoning ordinance noncompliant with the general plan is invalid because section 65860, subdivision (a) preempts — and thereby forbids — the existence of that newly enacted ordinance. But although a referendum rejecting a zoning ordinance amendment does, for a temporary period, result in the continuation of an out-of-compliance zoning ordinance, it does so as part of the exception to section 65860, subdivision (a) found in subdivision (c).

The *deBottari* court’s decision was motivated, to some extent, by the general plan’s role “as the ‘constitution for all future developments within the City.’ [Citation.]” (*deBottari, supra*, 171 Cal.App.3d at p. 1212; see also *Leshner, supra*, 52 Cal.3d at p. 540 [describing the general plan as “a ‘constitution,’ or

perhaps more accurately a charter for future development”].) Leveraging this logic, the City and River Park argue that allowing a referendum to reject a zoning ordinance chosen by the local government to achieve compliance with the general plan will undermine the purposes of the plan. According to the City and River Park, such a result would “lock inconsistent zoning in place for months if not years” and would create substantial uncertainty about how that land can be used in the interim. Yet our task is — where reasonably possible — to protect the people’s reserved legislative power, including the power to bring a referendum. (Cf. *California Cannabis*, *supra*, 3 Cal.5th at pp. 933-934.) To the extent possible, we also seek to reconcile the statutory provisions governing general plans in the Government Code with the Constitutional and statutory right to referendum. (*Tripp v. Swoap* (1979) 17 Cal.3d 671, 679 [“two codes . . . ‘must be read together and so construed as to give effect, when possible, to all the provisions thereof’ ”]; cf. *DeVita*, *supra*, 9 Cal.4th at p. 778 [“the question is not whether Elections Code section 9111 in some fashion misconstrues the planning law, but rather how that statute can be *reconciled with the planning law*”].) We can harmonize these provisions by applying section 65860, subdivision (c)’s explicit reference to a reasonable period of time during which the general plan and zoning ordinance may be inconsistent after a general plan amendment. In contrast, the City and River Park essentially urge us to find that the policies underlying general plans are of such great importance that they require us to eliminate the right to referendum. That would not be harmonization, but victory of general plans over the referendum right. Such a result would be contrary to our approach to statutory interpretation, and our liberal construction of the people’s reserved power of referendum.

Moreover, local governments may be able to prevent situations where the zoning ordinance does not comply with the general plan for an extended period of time. The Government Code, for example, states a policy of “concurrently

process[ing] applications for general plan amendments and zoning changes . . . so as to expedite processing of such applications.” (§ 65862.) If local governments simultaneously alter the general plan and the zoning ordinance, then no inconsistency between the general plan and zoning ordinance would occur during the pendency of a referendum against those simultaneous changes. Indeed, the need to avoid this risk may incentivize compliance with the Government Code’s stated policy. In addition, local governments may be able to develop creative strategies for implementing zoning ordinances that would obviate the need for successive referendums if electors disagree with the local government’s later choices for a property’s zoning designation.

The City and River Park maintain that giving effect to the referendum will engender awkward questions about what constitutes a “reasonable time” for a zoning ordinance to remain out of compliance with a general plan. An implication of this argument is that when a referendum leaves in its wake an inconsistency between a zoning ordinance and a general plan, the referendum would become invalid if it would cause an “unreasonable” amount of time to transpire. But we can resolve this case without sorting out whether section 65860’s reasonable time requirement can ever limit the people’s ability to bring a referendum. Whatever “reasonable” might mean in subdivision (c), we find no basis for reading into this term such a specific limitation that it effectively prohibits the temporary inconsistency required to hold a single referendum, or to align the zoning ordinance with the general plan in a manner consistent with the referendum’s result. The statute does not provide a benchmark for what is a “reasonable time” to amend the zoning ordinance, and nothing in its explicit provisions, structure, or other indicia of its purpose suggest that the “reasonable time” reference is best construed as effectively prohibiting a straightforward referendum challenge to a zoning ordinance. (See *California Cannabis, supra*, 3 Cal.5th at pp. 933-934.)

The City points out how the Senate version of subdivision (c) to section 65860 — the one ultimately enacted — was adapted from a competing Assembly Bill that would have required a zoning ordinance to match the general plan within 90 days. Even if we assigned particular importance to this morsel of legislative history, the most plausible inference arising from it would cut against the City’s argument: the Legislature failed to enshrine the 90-day limit in the statute, and left no basis for concluding that the only reasonable meaning of “reasonable time” is a 90-day limit restricting the people’s referendum power.

In addition, the timing of subdivision (c)’s addition to section 65860 provides some indication that the Legislature can reasonably be understood to have been aware of the delays that might ensue from a referendum. Currently, a referendum stays the effective date of the zoning ordinance, and requires the issue be decided at a special or general election more than 88 days after the legislative body orders an election on the issue. (Elec. Code, § 9241.) At the time the Legislature added subdivision (c) to Government Code section 65860 in 1973, the Elections Code contained the predecessor to Elections Code section 9241, Elections Code former section 4052. That provision required a referendum to be either decided at a general election 45 days after the legislative body orders the election, or at a special election occurring “not less than 60 nor more than 75 days after the date of the order.” (Stats. 1969, ch. 940, § 14, p. 1881.) Moreover, in the same legislative session as the 1973 amendment to Government Code section 65860, the Legislature extended the time for a special election to occur not less than 74 and not more than 89 days after the legislative body’s order. (Stats. 1973, ch. 167, § 13, p. 470.) This is all to say, when the state Legislature added the “reasonable time” requirement of section 65860, subdivision (c), we must presume it was aware that the referendum process would create delays similar to the current

88 day waiting period to hold an election. (See *People v. Pieters*, *supra*, 52 Cal.3d at p. 907.)

This conclusion is supported by previous interpretations of other provisions that involve a “reasonable time.” Former section 53051, for example, made local agencies liable for injuries caused by “dangerous or defective condition[s] of public property” if the government had notice of the condition and “[f]or a reasonable time after acquiring knowledge or receiving notice, failed to remedy the condition” (Former § 53051.) The Court of Appeal determined that this “reasonable time” determination was a context-dependent question for the trier of fact. (*Bady v. Detwiler* (1954) 127 Cal.App.2d 321, 335.) Similarly, for contracts and the law of sales, the question of whether a “reasonable time” has passed is a question that depends on the circumstances. (*Whitfield v. Jessup* (1948) 31 Cal.2d 826, 831 [“ ‘It may be taken as axiomatic that what constitutes a reasonable time must be determined from the particular circumstances in the individual case’ ”]; see also *Fromm v. Sierra Nevada Silver Min. Co.* (1882) 61 Cal. 629, 631–632.) What these examples demonstrate for the purposes of this case is that we may sensibly presume the Legislature could have contemplated that a “reasonable time” would vary based on circumstance when it added subdivision (c) to section 65860. The people’s power of initiative and referendum constitutes a background principle of constitutional and statutory law that dates back to the early 1900s. Given the fundamental role these powers play not only in local jurisdictions but in the legislative process across the state, we can reasonably presume that the Legislature enacted subdivision (c) with sufficient information to know that the referendum power might be used to challenge a zoning amendment. In this institutional and historical background, the context-dependent reference to a “reasonable time” in subdivision (c) is best read as compatible with use of referendums, rather than as an oblique way to specifically exclude the use of

referendums. So we conclude that a “reasonable time” includes the time necessary to bring at least one referendum challenge, and to rectify the inconsistency between the zoning ordinance and the general plan in a manner that complies with the referendum.

III.

Even if a similar referendum could be valid in some circumstances, the City and River Park insist a problem existed with this particular referendum. The trial court was right to remove this referendum from the ballot, they posit, because the local government would have found it impossible to comply with the referendum in light of the specific general plan that existed at the time. They assert that the referendum sought to prevent a change in the property’s zoning designation from industrial to commercial, not merely to prevent a zoning designation that allows hotels. Implementing a commercial zoning designation prohibiting hotels from being built on the property, they claim, would comply with the general plan but not the referendum. In the alternative, they contest whether a commercial zoning designation is available for this particular property that forbids hotel use. If either of these assertions is true, they contend the referendum would trigger a one-year delay in implementing any commercial zoning designation under Elections Code section 9241.

Elections Code section 9241 states that if a referendum is successful, “the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its . . . disapproval by the voters.” (Elec. Code, § 9241.) Elections Code section 9241’s one-year prohibition extends to any subsequent ordinance that is “essentially the same” as the original ordinance. (Cf. *Deukmejian, supra*, 30 Cal.3d at p. 678 [contrasting ordinances that are “essentially the same” with those that are “essentially different”]; *Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1110 [discussing whether a

subsequent ordinance is “essentially similar” in the context of the stay imposed during the pendency of a referendum].) The City and River Park believe this means the referendum is invalid because a one-year delay would not comply with Government Code section 65860’s “reasonable time” requirement.

But this is a question we need to reach only if the City and River Park had in fact shown it would be impossible for the City to comply with the general plan and a successful referendum, thus triggering Elections Code section 9241’s one-year delay. They have failed to do so.

First, we cannot conclude that the referendum’s purpose was to prevent a change from industrial to commercial zoning for the property. The City and River Park argue that the trial court made a factual finding to this effect. They assert that the Court of Appeal gave insufficient deference to this factual finding by asserting that “[t]he stated purpose of the referendum was to prevent the development of a hotel on the parcel.” (*City of Morgan Hill, supra*, 12 Cal.App.5th at p. 38.) The City and River Park’s characterization of the trial court’s findings is incorrect. They cite to a portion of the trial court’s order in the instant case. But the trial court’s order merely finds that the referendum would leave in place a zoning designation that does not comply with the general plan and would be an invalid “enact[ment]” under *deBottari*. We perceive no “factual finding” about the purpose of the referendum to which the Court of Appeal gave insufficient deference.

The City and River Park also point to an unpublished ballot measure argument. That argument purportedly would have been presented to voters if the referendum had not been stayed. Although we may consider ballot arguments “to ascertain the voters’ intent” (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 801), a lone unpublished ballot argument is insufficient for us to discern what the voters’ purpose would be should they approve the referendum. So this

unpublished ballot argument is insufficient to make the “clear showing of invalidity” necessary to remove a referendum from the ballot before a vote even occurs. (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 (*Brosnahan*); *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1005.)³

The City argues in the alternative that the Court of Appeal’s reasoning relies on the availability of other general-plan-compliant zoning designations that also comply with the referendum, when no such zoning designations are available for the property. Hotel Coalition contends that this argument is forfeited because the City and River Park did not contest the availability of other zoning designations in the trial court or the Court of Appeal until the petition for rehearing. (See *Midland Pacific Building Corp. v. King* (2007) 157 Cal.App.4th 264, 276 [“It is much too late to raise an issue for the first time in a petition for rehearing”]; see also *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1092.) Indeed, because the issue was uncontested, the Court of Appeal found that “it is undisputed that City could have selected any of a number of consistent zoning districts to replace the parcel’s inconsistent zoning” (*City of Morgan Hill, supra*, 12 Cal.App.5th at p. 41.) Regardless, we do not find the issue forfeited, because *deBottari* established that the availability of other zoning designations was irrelevant. The Court of Appeal’s decision here constituted a change in law that placed, for the first time, the City on notice that it needed to contest the availability of alternative zoning designations. The City preserved the

³ Hotel Coalition concedes the referendum’s purpose was to prevent hotel use. There are multiple general-plan-compliant zoning designations that *allow* hotel use, and so without Hotel Coalition’s concession, and the lack of evidence about voter intent before the court, the referendum likely could not be invalidated. But given Hotel Coalition’s concession, we assume for the purposes of this opinion that zoning designations allowing hotel use would not comply with the referendum.

issue by challenging that contention in a petition for rehearing and in its briefing before this court.

Twelve separate commercial zoning designations are available in the City, six of which allow use by hotels. Yet while neither party disputes the existence of these designations, the City contends that five of the remaining six designations prohibiting hotels cannot possibly apply to the property at issue here, and that it is “questionable” whether the last remaining commercial zoning designation was available for the property. These arguments were not fully explored below. Moreover, neither party fully addressed the possibility that the City would be able to *add* zoning designations that would comply with the general plan and referendum, even if no *current* zoning designation would comply with the general plan and the referendum. Nor have the City and River Park addressed whether the City would be able to alter the general plan in response to the referendum. Although we held in *Leshner* that an initiative instituting an invalid zoning ordinance cannot be used to alter a general plan (*Leshner, supra*, 52 Cal.3d at p. 541), we have not addressed whether section 65860 would require invalidation of a referendum where a county or city cannot change the zoning ordinance, but can alter the general plan to comply with the referendum and section 65860. This inquiry may be affected by the facts of a given case. We have not considered whether invalidation is required when, as is apparently the case here, a general plan is amended to accommodate a specific development, the zoning amendment that is the subject of a referendum is not adopted concurrently with the general plan amendment, and the referendum manifestly disapproves of the use the general plan amendment was designed to accommodate.

Because of these unresolved questions not fully briefed in the case before us, we remand to the trial court for it to determine whether existing alternative zoning designations would be viable for the property postreferendum, and if not,

what would prevent the City from creating a new zoning designation that would be consistent with both the general plan and a successful referendum. If there is at least *some* avenue for the City to change the zoning ordinance to comply with the general plan within a reasonable time, the referendum must go forward as there has been no “clear showing of invalidity.” (*Brosnahan, supra*, 31 Cal.3d at p. 4.) If necessary, the trial court may also address whether a referendum can be invalidated where the City has the ability to amend the general plan in order to conform the plan to the zoning designation that the referendum would leave in place.

IV.

State law may preempt the power of referendum where there is a definite indication of the Legislature’s purpose to do so. Not so in this case. We can divine no indication that such preemption was the Legislature’s intended purpose. While the enactment of a zoning ordinance that does not comply with a general plan is invalid *ab initio*, a successful referendum challenging a zoning ordinance amendment seeking to make the zoning ordinance consistent with a general plan amendment falls within the exception created by section 65860, subdivision (c) — at least where other consistent zoning designations could have been selected instead. Subdivision (c) allows inconsistent zoning for a “reasonable time,” and a single referendum and responsive government action do not render the amount of time it takes to reach consistency “unreasonable.” Given our duty to protect the referendum power, we conclude the Court of Appeal was correct to hold that a referendum can be used to challenge a zoning ordinance amendment that attempts to make the zoning ordinance consistent with an amended general plan. But it is not clear if other zoning designations were available for the property here, or whether the City has other means to comply with a successful referendum while making the zoning ordinance and the general plan consistent with one another. So

we vacate the judgment of the Court of Appeal and remand the case to the Court of Appeal with directions to remand to the trial court to address these questions.

CUÉLLAR, J.

WE CONCUR:

CANTIL-SAKAUYE, C. J.

CHIN, J.

CORRIGAN, J.

LIU, J.

KRUGER, J.

MARGULIES, J. *

Attachment: Court Opinion (2603 : Rescind Ordinance No. 2131 New Series)

* Associate Justice of the Court of Appeal, First Appellate District, Division One, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CONCURRING OPINION BY CHIN, J

I fully agree with the majority opinion. It is a close question whether a remand is necessary to determine “if other zoning designations were available for the property here, or whether the City has other means to comply with a successful referendum while making the zoning ordinance and the general plan consistent with one another.” (Maj. opn., *ante*, at p. 25.) It certainly *appears* the City of Morgan Hill (the City) has the means to make the zoning ordinance and general plan consistent with one another if the referendum succeeds.

Even if other zoning designations for the property are not currently available, I see no obvious impediment to the City simply amending the zoning ordinance to achieve the necessary consistency. Alternatively, the City could amend the general plan to make it once again consistent with the zoning ordinance. The City amended the general plan previously to permit a hotel to be built on the property. If the referendum succeeds, it seems the City could simply change the general plan back the way it was.

Nevertheless, because the briefs have not focused on this precise point, I agree that a remand is appropriate. If the City chooses to pursue the matter, it may argue on remand that its authority in land use planning is so limited that it could not possibly make the zoning ordinance and the general plan consistent should the referendum succeed. The question, however, is not whether the City *wishes* to do what is necessary to comply with a successful referendum. It clearly does not

wish to do so. The question is whether it would be *impossible* for the City to make the general plan and zoning ordinance consistent should the referendum succeed.

CHIN, J.

I CONCUR:

CANTIL-SAKAUYE, C. J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion City of Morgan Hill v. Bushey

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 12 Cal.App.5th 34
Rehearing Granted

Opinion No. S243042
Date Filed: August 23, 2018

Court: Superior
County: Santa Clara
Judge: Theodore C. Zayner

Counsel:

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CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Jennifer Carman, Community Development Director
APPROVED BY: City Manager

ADOPT RESOLUTION AMENDING THE GENERAL PLAN LAND-USE DESIGNATION ON THE PARCEL LOCATED AT THE SOUTH-EAST CORNER OF LIGHTPOST WAY AND MADRONE PARKWAY. (APN 726-33-026) FROM COMMERCIAL TO COMMERCIAL/INDUSTRIAL

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt Resolution approving an amendment to the General Plan land-use designation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving Our Community History

2019 Strategic Priorities

Community Engagement and Messaging
Economic Development

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

In November 2014, the City Council approved a change to the General Plan land use designation from Industrial to Commercial on a 3.39-acre site in anticipation of a future hotel development project. This was completed ahead of the City's comprehensive General Plan Update process Morgan Hill 2035. The zoning for the site remained ML – Light Industrial (ML was the light industrial zoning district in the previous Zoning Ordinance). City Council later approved a rezone to Commercial to be consistent with the General Plan land use designation. This rezone was challenged by a referendum.

Following extended litigation, the State Supreme Court upheld the right to referend a zoning ordinance, even when a zoning ordinance was required to bring zoning into conformance with the General Plan. The Court further held that inconsistent zoning can be remedied by amending the General Plan.

In this case, if the City Council chooses to rescind the zoning ordinance (rather than submit it to the voters for approval), the City must return the General Plan land use designation to an Industrial land use to achieve consistency between the General Plan and the Zoning Ordinance.

SITE DESCRIPTION:

The subject site, located on the southeast corner of Madrone Parkway and Lightpost Way, contains one unaddressed legal parcel (APN 726-33-026). Surrounding General Plan land use designations include Commercial to the south (red), Commercial/Industrial to the north and west (blue), and Industrial (gray) to the east.

EXISTING



PROPOSED



ANALYSIS:

The proposed project was analyzed with respect to consistency with the: 1) General Plan; 2) California Environmental Quality Act.

1) General Plan

The existing Commercial General Plan land use designation was intended to provide for commercial services closely related to those hotel uses to the south of the property. It was thought that the proximity of existing hotels would encourage clustering of these use types, which is consistent with commercial “clustering” policies in the City’s General Plan, and the purpose of the City’s commercial zoning districts.

Prior to the change to Commercial, the entire area was designated Industrial. This industrial designation was first set in the 1980s. The return to an industrial land use designation such as Commercial/Industrial is intended to provide area for research, manufacturing, wholesale, and heavy service commercial uses that may be otherwise unsuitable to commercial land use designations. The area designated as Commercial/Industrial was altered from Industrial with the adoption of Morgan Hill 2035

General Plan. The Commercial/Industrial land use designation was developed as part of the Morgan Hill 2035 process and is defined below:

Commercial/Industrial: The purpose of the Commercial/Industrial designation is to promote job-generating development of lands, generally located along Highway 101, by allowing greater flexibility in terms of allowing a varied mix of industrial, office, and commercial uses that are compatible with existing development. Specifically, this designation would allow office, research and development, light industrial uses, and similar uses, and would also allow amenities, such as retail services, restaurants, and lodging to support the primary job-generating uses within business park settings. In order to maintain an industrial character, small, suburban strip centers are discouraged in this designation, although larger big box type developments may be allowed because they mix elements of retail commercial and warehouse forms and uses.

This site is surrounded to the north and west by sites with Commercial/Industrial land use designations. The proposed amendment to return the commercial designation to an industrial designation is compatible with the existing General Plan land use designations of the adjacent properties. The existing zoning designation of IL – Light Industrial shall remain.

The proposed land use designation changes from Commercial to Commercial/Industrial is consistent with the following General Plan Policies and the Economic Blueprint goal of preserving industrial lands:

ED 2.1 Robust Mix of Land Uses. Maintain sufficient areas of land to promote the development of a balanced community containing adequate jobs, retail services, and commercial activity. Preserve an adequate supply of industrial and commercial lands to support local jobs and City's fiscal sustainability.

COMMUNITY ENGAGEMENT: Inform

Direct mailed notice was provided to a 300-foot radius surrounding the project site and a ¼ page display ad in the newspaper due to the Citywide nature of the General Plan.

ALTERNATIVE ACTIONS:

If the City Council does not take action, the General Plan land use designation and the corresponding zoning district will be inconsistent. This is a violation of Government Code section 65860(a), which states, "County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met: (1) The city or county has officially adopted such a plan. (2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan."

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission considered this General Plan land use map amendment during the December 10, 2019 regular meeting. The Commission voted unanimously, with the six commissioners present, to recommend approval of the General Plan Land Use Designation change (Attachment 2).

FISCAL IMPACT:

The work for this City initiated General Plan amendment was accommodated within the Development Services' existing budget and workplan.

CEQA (California Environmental Quality Act):

This General Plan Amendment is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed General Plan amendment is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. In this case, the proposed amendment would simply maintain the status quo.

Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Any development that occurs in the future subject to such standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. CC-GPA Resolution
2. December 10th Planning Commission Meeting (web link)
3. LOCATION MAP

RESOLUTION NO. XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A GENERAL PLAN AMENDMENT GPA2019-0006 TO AMEND THE GENERAL PLAN LAND USE MAP ON AN 3.39 ACRE PARCEL COMMERCIAL TO COMMERCIAL/ INDUSTRIAL ON A PARCEL LOCATED AT THE CORNER OF LIGHTPOST WAY AND MADRONE PARKWAY (APN 726-33-026)

WHEREAS, the City proposes to amend the General Plan land use designation from Commercial to Commercial/Industrial on a 3.39 acre parcel located at the corner of Lightpost Way and Madrone Parkway (APN 726-33-026);

WHEREAS, the General Plan Amendment to amend the map was reviewed and found to be consistent with the 2035 General Plan;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of December 10, 2019, at which time the Planning Commission recommended approval of General Plan Amendment application, GPA2019-0006: Lightpost; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The proposed General Plan Amendment is found to be consistent with the General Plan, specifically with respect to General Plan policy ED 2.1 Robust Mix of Land Uses and the Economic Blueprint goal of preserving industrial lands.

SECTION 2. The City Council of the City of Morgan Hill hereby adopts the amendment to the General Plan land-use map as described in the attached Exhibit A, and by this reference incorporated herein.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 18th day of December 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 Ordinance No. _____ New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 18th day of December 2019.

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

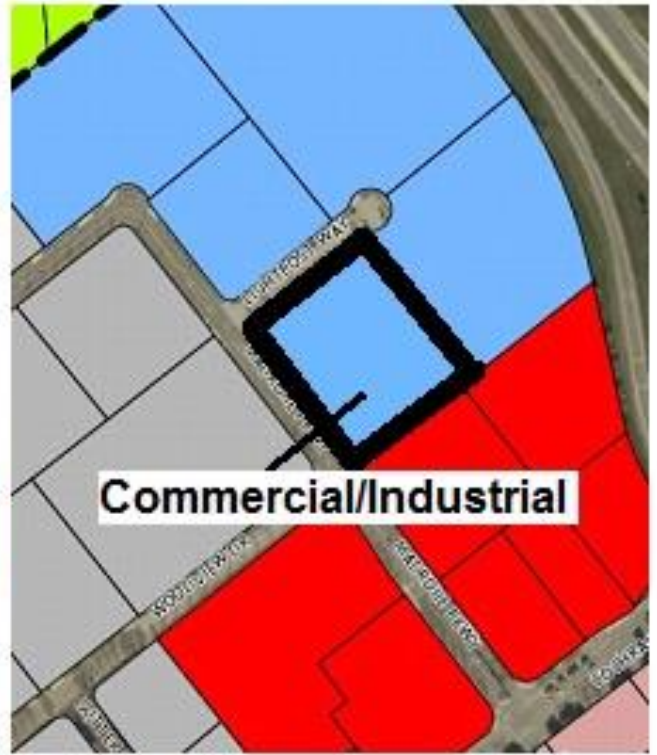
DATE: _____

 IRMA TORREZ, City Clerk

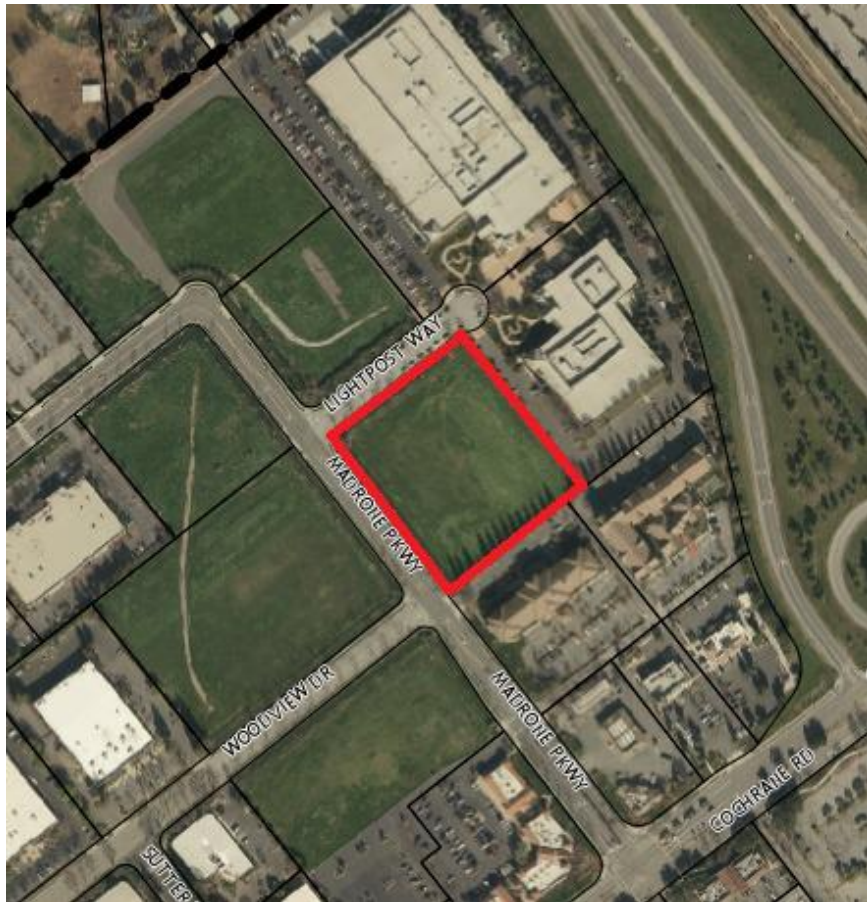
EXHIBIT "A"



EXISTING



PROPOSED

LOCATION MAP:**PROJECT SUMMARY:**

1. Location: Southeast corner of Madrone Parkway and Lightpost Way (APN 726-33-026)
2. Site Area: 3.39 Acres
3. General Plan: Commercial
4. Zoning: IL – Light Industrial
5. Request: Request for a General Plan Amendment to return the Land Use Designation to Commercial/Industrial.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

ADOPT RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS (MISC2019-0009) THAT RESPOND TO THE REQUIREMENT OF SB330-GOVERNMENT CODE SECTION 65589.5

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt Resolution approving the Residential Development Design and Development Standards.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Community Engagement and Messaging
Infrastructure
Agricultural Preservation
Housing
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
General Plan/Housing Element
Sewer System Master Plan
Water System Master Plan

REPORT NARRATIVE:

California Senate Bill 330 (SB 330), establishes the "Housing Crisis Act of 2019", effective January 1, 2020. The bill amends the Housing Accountability Act (HAA) (Government Code Section 65589.5), making changes to the local approval process and the Permit Streamlining Act until January 1, 2025.

The Residential Development Control System (RDCS) Competition Manual has been the City's guiding document containing criteria and standards for residential development. SB 330 would suspend the City's RDCS program for five years (until January 1, 2025).

The City is proposing the adoption of Residential Development Design and Development Standards (Standards) (Attachment 2) to address the requirements of SB

330. The key requirement of the Standards is they are to be “Objective Standards”, as defined:

“Standards that involve no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official”

The proposed Standards have been developed to replace the RDCS Competition Manual, have been designed to meet the requirements of SB330, and are consistent with the Morgan Hill 2035 General Plan.

Planning Commission Action

The Planning Commission reviewed the Standards at a workshop held on November 12, 2019 (Attachment 3) and provided preliminary comments. Refinements were made to the Standards and presented to the Planning Commission at a public hearing held on November 18, 2019 (Attachment 4). The Planning Commission reviewed the Standards section by section and received public comment for each. The Planning Commission discussed the following proposed standards at length:

1. **Orientation to an existing Street:** The development community had concern that requiring a primary entrance (front door) to be located along a street would prevent the use of a sound wall. It was explained that the standard was developed to implement General Plan Policy CNF-11.18 which states, “for residential buildings adjacent to a street, orient entrances to that street”. A separate standard was developed to address sound walls. Sound walls may be used when an acoustical analysis is provided, and it can be demonstrated that a sound wall is needed for noise mitigation. The Planning Commission recommended that the standard be modified to include a statement regarding sound walls.
2. **Agricultural Buffers:** The development community raised concern regarding the proposed “Agricultural Buffer” standard of 100 feet, and that the particular standard is not referenced in the following General Plan Policy:

Policy NRE-4.9 **Urban Encroachment:** Require new urban development adjacent to an existing agricultural operation to create an appropriate buffer area, on land within the proposed development, between urban uses and agricultural activities.

When non-agricultural use development occurs adjacent to agricultural uses, the resulting interface challenges create a burden for ongoing farming. The agricultural use often receives complaints from adjacent residences regarding dust, noise, spraying activities, and unsightly but necessary infrastructure such as portable toilets. For these reasons, the proposed 100-foot buffer has been

recommended in the Standards. The development community members that spoke on this issue were concerned about individual development projects and the effect of the buffer standard on those particular preliminary site plans.

It was explained at the Planning Commission meeting that for the buffer, “appropriate” is not quantifiable and would lead to protracted discussions and discretionary action to be taken by the City. As part of the objective standard requirement, there needs to be a specified minimum buffer to avoid conflict as a function of the development approval process to ensure that adjacent agricultural activities can continue. The RDCS Competition Manual required a 500-foot buffer to obtain points. The City team researched other jurisdictional requirements for agricultural buffers and found the City of Gilroy requires a 150-foot buffer, Santa Cruz County 200-foot buffer, City of Watsonville 200-foot buffer, City of Salinas 1,000-foot buffer, and Monterey County 50 to 200-foot buffer.

The Planning Commission agreed that a buffer was necessary and agreed that City staff could finalize a recommendation for City Council for consideration. They thought a reduction to 75 feet could possibly work. In addition, they requested that agricultural operation be defined for implementing the buffer requirement. The City has defined agricultural use in the Agricultural Lands Preservation Program, Section 18.152.030 of the City of Morgan Hill Municipal Code.

It is believed a requirement of a 100-foot buffer between an existing agricultural operation and new development would create the required “appropriate” buffer implementing the City’s General Plan policy.

3. **Garage Door Design:** The Planning Commission had concern that the following proposed standard was not objective and was unable to come to consensus regarding a revised garage door design standard:

“The garage doors proposed within the project feature windows or other architectural design features consistent with the main dwelling”. This standard was deleted.

4. **Multi-family Ground Level Entrances:** The development community and Planning Commission had concern that the following standard would be overly restrictive and would limit the design of multi-family projects:

“The project provides a minimum of 25 percent of the project with private, exterior ground-level entries to individual units”.

Although this provision is a requirement of General Plan Policies CNF 11.24 and 11.26, the Planning Commission recommended deletion of the standard.

The Planning Commission voted to recommend City Council approval of the Standards as amended.

COMMUNITY ENGAGEMENT: Engage

The Planning Commission workshop regarding the Standards held on November 12, 2019 was open to the public and included opportunity for community members to participate in discussion by asking questions and providing input on the draft Standards.

A 10-day public hearing notice was published in the Friday, November 8, 2019 and Friday, December 6, 2019 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. The draft Standards were also sent to the City's residential developer stakeholders list, along with the notice of the hearings.

ALTERNATIVE ACTIONS:

If the City Council does not take action to adopt the proposed Standards or direct staff to revise the Standards prior to January 1, 2020, the City would be unable to impose or enforce new design standards that are not objective after January 1, 2020. An example of the standards that would not be allowed are any that require "to the satisfaction of the City Engineer".

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission reviewed the Standards at a workshop held on November 12, 2019. At the November 18, 2019 special meeting, the Planning Commission voted (6-0-1, with Commissioner Gonzalez-Escoto absent) to recommend City Council approval of the Standards.

FISCAL AND RESOURCE IMPACT:

This work is a direct result of recent legislative changes in State law for which the cost is borne and work is accommodated within the Planning Division's annual workplan and budget.

CEQA (California Environmental Quality Act):

The Residential Development Design and Development Standards are exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed design and development standards are not considered a project with potential for causing a significant effect on the environment requiring CEQA analysis. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Any development that occurs in the future subject to the design and development standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. CC Resolution
2. Exhibit A: Residential Development Design and Development Standards
3. Planning Commission Workshop- November 12, 2019 (web link)
4. Planning Commission Staff Report: November 18, 2019 (web link)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING MISC2019-0009: RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS IMPLEMENTING REQUIREMENTS OF SENATE BILL (SB) 330 HOUSING CRISIS ACT OF 2019.

WHEREAS, this proposed Resolution (MISC2019-0009) was considered by the City Council of the City of Morgan Hill at its meeting of December 18, 2019;

WHEREAS, the City Council has reviewed recommendations contained in the December 18, 2019, staff report on this item;

WHEREAS, the proposed Residential Development Design and Development Standards are necessary to comply with the requirements of SB 330 (Government Code Section 65589.5);

WHEREAS, the Development Services Director has determined that the Residential Development Design and Development Standards are exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed standards are not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis;

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby finds that the proposed Residential Development Design and Development Standards, Exhibit A, established by this Resolution herein described are compatible with the goals, objectives and policies of the General Plan of the City of Morgan Hill, in that they replace the Residential Development Control System (RDCS) Competition Manual which has been the City's guiding document containing criteria and standards for residential development. Furthermore, because the City's RDCS will be suspended for five years (until January 1, 2025), the new Standards have been developed consistent with SB 330 requirements, have been designed to meet the requirements of "Objective Standard", while maintaining consistency with the Morgan Hill 2035 General Plan. In

particular, General Plan policy references are provided throughout the Standards and would be implemented with each development project.

SECTION 2. All residential projects requiring a Design Permit (Section 18.108.040) shall be subject to The Residential Development Design and Development Standards as set forth in this Resolution. The proposed Residential Development Design and Development Standards are internally consistent with the overall zoning code.

SECTION 3. The City Council hereby approves the Residential Development Design and Development Standards.

PASSED AND ADOPTED THIS 18th DAY OF DECEMBER 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

∞ 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: _____



RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS

December 2019

I. PURPOSE

The purpose of the Residential Development Design and Development Standards is to articulate project design requirements for all residential and mixed-use developments. These standards will be utilized to detail the review process by clearly stating the City of Morgan Hill's objectives for high quality, residential projects that are aesthetically pleasing, livable, sustainable, well-connected to neighborhood services. The City is required to compile one or more lists that specify in detail the information required from any applicant for a development project.

II. RELATIONSHIP TO THE ZONING CODE, GENERAL PLAN AND SPECIFIC PLANS

A. Zoning Code

The Residential Development Design and Development Standards are consistent with the City's Zoning Code. These standards are intended to complement the development standards within the Zoning Code but not replace standard zoning district requirements. The Residential Development Design and Development Standards shall apply to all residential development projects proposed within Residential and Mixed Use zoning districts (unless exempt).

The intent of these Residential Development Design and Development Standards shall be met unless it can be demonstrated to the satisfaction of the decision-making body for the development project that meeting the intent of the Residential Development Design and Development Standards is physically infeasible or detrimental to the environmental quality of the project or surrounding area. The intent of these Residential Development Design and Development Standards shall be met unless as otherwise noted. Where these Residential Development Design and Development Standards are silent or perceived to be silent, the Zoning Ordinance shall govern.

B. General Plan

The General Plan establishes land use designations, densities, and a wide variety of other policies related to future development. Where there is conflict between these Residential Development Design and Development Standards, the General Plan governs.

C. Specific Plan

The Downtown Specific Plan (DTSP) was developed for the Morgan Hill Downtown and provides greater detail about land use, development standards, and building design than exist in the General Plan, and serves as the zoning for the area. The Residential Development

Design and Development Standards shall be the primary guiding document for review of residential projects within the DTSP area.

III. EXEMPTIONS

The Residential Development Design and Development Standards shall not apply to projects determined to be exempt from Design Review in accordance with Section 18.108.040.F (Exempt Projects).

IV. DEFINITIONS

- A. **Rules of Measurement.** Refer to Chapter 18.12 of the Morgan Hill Municipal Code.
- B. **Land Use Definitions.** Refer to Chapter 18.124 of the Morgan Hill Municipal Code.
- C. **General Terms.** Refer to Chapter 18.28 of the Morgan Hill Municipal Code.
- D. **Mixed-use Developments.** A mixed-use development shall consist of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
- E. **100 Percent Affordable Project.** A project (rental and for-sale projects) that commits 100 percent of the units as deed restricted with an affordability structure resulting in units available to extremely low income (0-30% Area Median Income), very low income (30-50% Area Median Income), low income (51-80% Area Median Income) or moderate (81-120% Area Median Income) households.
- F. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities are those uses defined in Section 18.152.030.E of the Morgan Hill Municipal Code.
- G. **“Active” agricultural use.**
 - a. Crop lands temporarily fallowed or grazing lands temporarily unused through rotational grazing may be considered an agricultural use if it can be demonstrated such practice is a typical and appropriate agricultural management strategy. For a livestock production, land that is fenced and available for grazing will be considered as being an agricultural use, even though grazing may only occur on a seasonal basis. In all cases, commercial agriculture must be the primary use of the land; or,

- b. The property has generated annual revenue from sales of agricultural commodities in 3 of the past 5 years.

V. DESIGN AND DEVELOPMENT STANDARDS

These Residential Development Design and Development Standards augment the standards in the City's Municipal Code and provide qualitative direction to meet the City's goal for high quality design of residential projects. Any deviation from these Residential Development Design and Development Standards or the letter of these standards is a deviation from the Zoning Ordinance and requires approval of a Minor Exception as specified in Section 18.108.070 (Minor Exceptions) of the Morgan Hill Municipal Code. The Planning Commission shall review and take action on all requested exceptions. Appeals of completeness reviews shall be processed pursuant to Morgan Hill Municipal Code Chapter 18.112.

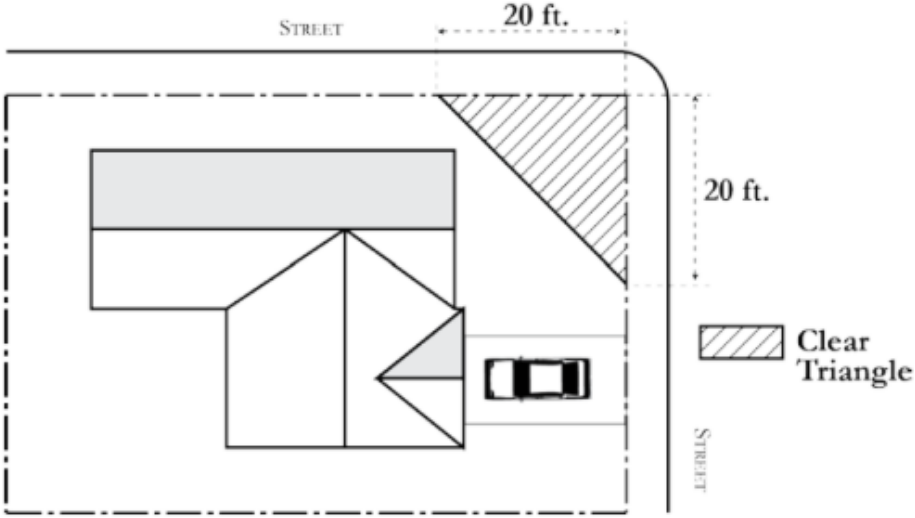
A. **Development Services Requirements.** For each item on the list, compliance shall be indicated in the last column with a "Y" for yes, or "N" for no. If an item on the list is not applicable to a proposed project, "N/A" shall be noted.

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
AFFORDABLE HOUSING AND ACCESSORY DWELLING UNITS	
Inclusionary Housing and Below Market Rate Program: The project complies with Chapter 14.04 "Inclusionary Housing" which requires at least fifteen percent of all units in residential projects be inclusionary units that shall be made available at affordable rents or affordable sales prices as established in Chapter 14.04. The inclusionary units shall be approved, and construction of the inclusionary units shall be completed not later than the times prescribed in Section 14.04.050 of the Morgan Hill Municipal Code, unless an alternative requirement is approved pursuant to Section 14.04.070 of the Morgan Hill Municipal Code. (GP Policy HE-1rr) Projects with two or more units shall demonstrate compliance by providing the following: - For-Sale Projects in Downtown Specific Plan (DTSP) area: Designate 10 percent of the dwelling units at affordable sales prices to moderate-income households - For-Sale Projects Outside DTSP area: Designate 15 percent of the dwelling units at affordable sales prices to moderate-income households - Rental Projects in DTSP area: Designate 10 percent of the dwelling units at affordable rents by low-income and very low-income households. At least one-half of required units to be offered to very low-income households	

CITY OF MORGAN HILL RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS
Page 4 of 22

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Rental Projects Outside the DTSP area: Designate 15 percent of the dwelling units at affordable rents by low-income and very low-income households. At least one-half of required units to be offered to very low-income households The applicant shall provide details regarding the number of inclusionary units, the level(s) of affordability, the location and type of inclusionary units, and timing of construction of inclusionary units in relation to the construction of the market-rate units contained in the development. If proposing to satisfy the requirement by an alternative means of compliance, Sufficient information and documentation are provided as required by Section 14.04.070. Proposal of in-lieu fee payment is subject to approval by City Council.	
Accessory Dwelling Unit (ADU) Requirements: If the project includes ADU's, the project shall comply with Chapter 18.84 Accessory Dwelling Units of the Morgan Hill Municipal Code.	
SITE PLANNING	
Zoning Compliance: Project complies with the applicable zoning district standards: - Residential Estate Districts (RE-10, RE-2.5, RE-1). Refer to Table 18.16-2 of the Morgan Hill Municipal Code. - Residential Detached Low and Medium Density Districts (RDL-20,000, RDL-12,000, RDM-9,000, RDM-7,000). Refer to Table 18.16-3 of the Morgan Hill Municipal Code. - Residential Detached High Density District Development (RDH-4,500). Refer to Table 18.16-4 of the Morgan Hill Municipal Code. - Residential Attached Low Density Districts (RAL-3,500, RAL-3,000) Refer to Table 18.18-2 of the Morgan Hill Municipal Code. - Alternative Standards also available. Refer to Table 18.40-2. - Residential Attached Medium Density (RAM). Refer to Table 18.18-3 of the Morgan Hill Municipal Code. - Alternative Standards also available. Refer to Table 18.40-2. - Residential Attached High Density (RAH). Refer to Table 18.18-3 of the Morgan Hill Municipal Code.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
g. For projects that include residential units within the Mix Use Neighborhood (MU-N) and Mixed Use Flex (MU-F) Districts, refer to Table 18.22-2 of the Morgan Hill Municipal Code. h. For project that include residential units within the Downtown Specific Plan refer to the development standards provided within the Downtown Specific Plan. i. Whenever a requirement of an overlay zone or combining district conflicts with a requirement of the underlying base zone, the overlay zone or combining district requirement shall control.	
Orientation to an <u>existing</u> Street: For residential buildings adjacent to a collector or arterial street, the primary entrance of homes (front door) is located along the street unless sound walls are installed (see “Sound Wall” section for requirements). (GP Policy CNF-11.18)	
Intersection Sight Distance/Clear Vision Triangle: For projects located adjacent to pedestrian crossings or street intersections, a “Clear Vision Triangle” (see figure below) is provided to comply with the City’s Municipal Code Section 18.92.080, Intersection Sight Distance. This triangular area ensures that drivers, bicyclists and pedestrians have clearer views of crossing traffic, which improves intersection safety for all parties. No structure, vehicle, object or landscaping over three feet in height may be placed within a clear vision triangle. Trees pruned at least eight feet above the established grade of the curb so as to provide clear view by motor vehicle drivers are permitted within a clear vision triangle. The areas subject to these standards are those portions of the Clear Vision Triangle areas located on private property outside the public right-of-way. Where the required front and side yards for a project measure less than 25 feet when combined, the distance of each of the two sides of the clear vision triangle along the property lines will be 15 feet. The City Engineer or designee may approve alternative clear vision triangles under circumstances where the above requirements cannot be met.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
	
Sound Walls: An Acoustical Analysis shall be provided to demonstrate need for noise impact mitigation. Site planning and design techniques shall be utilized to minimize the use of sound walls. Sound wall is allowed if required to meet noise standards and applicant has demonstrated that other forms of mitigation are not available as described herein. Application demonstrates that other forms of mitigation such as installation of earth berms; increasing the distance between the noise source and the receiver; intervening placement of non-sensitive structures such as parking lots, utility areas, and garages to shield noise sensitive areas; orientating buildings to shield outdoor spaces from the noise sources; and minimizing noise at its source; are not available. If a sound wall is allowed, the maximum height of the sound wall shall be eight feet. Dimension shall be as determined in the acoustical analysis. Residential projects adjacent to the freeway shall meet the criteria as described in SSI-9.3 of the General Plan. The sound wall must be landscaped or vegetated for aesthetic purposes and to prevent graffiti and vandalism. (GP Policy CNF-8.14, SSI-8.9, 9.2, 9.3, 9.4, 9.6, and 9.7)	
Agricultural Buffer: If the project is located adjacent to an active agricultural use, an open space easement has been provided to buffer between the active agricultural use that are adjacent to the proposed project and new development. The size and configuration	

DESIGN AND DEVELOPMENT STANDARD				PROJECT COMPLIES																												
of the buffer is a minimum of 100 feet between the active agricultural use and the nearest new structure as measured from the property line.																																
(GP Policy NRE-4.9)																																
On-Site Recreational Amenities: The project has provided on-site recreational amenities to serve residents based on the following table: (GP Policy CNF-11.10)																																
<table><tr><th colspan="4">NUMBER OF AMENITIES REQUIRED FROM EACH TIER BASED ON PROJECT SIZE</th></tr><tr><th>Project Size</th><th>Tier 1</th><th>Tier 2</th><th>Tier 3</th></tr><tr><td>16 to 50 units</td><td>2</td><td>2</td><td></td></tr><tr><td>51-100 units</td><td>2</td><td>2</td><td>1</td></tr><tr><td>101-150 units</td><td>2</td><td>2</td><td>2</td></tr><tr><td>151+ units</td><td>2</td><td>3</td><td>3</td></tr><tr><td>201+ units</td><td>2</td><td>3</td><td>3</td></tr></table>				NUMBER OF AMENITIES REQUIRED FROM EACH TIER BASED ON PROJECT SIZE				Project Size	Tier 1	Tier 2	Tier 3	16 to 50 units	2	2		51-100 units	2	2	1	101-150 units	2	2	2	151+ units	2	3	3	201+ units	2	3	3	
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Project Size	Tier 1	Tier 2	Tier 3																													
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51-100 units	2	2	1																													
101-150 units	2	2	2																													
151+ units	2	3	3																													
201+ units	2	3	3																													
<u>Tier 1 amenities:</u> • Shuffleboard • Horseshoes • Bowling green w/artificial turf • Picnic/barbeque area • Park benches • Passive water features (e.g. fountain) • Passive recreation area and/or gardens																																
<u>Tier 2 amenities:</u> • Cabana or shade trellis area • Two picnic/barbeque areas • Clubhouse • Volleyball court and/or Bocce ball court • Outdoor racquetball/handball tilt-up wall • Dog Park • Sauna and/or Jacuzzi																																

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
- Community garden plots (minimum one forty-eight-square-foot plot per each ten dwelling units) with water service located in an area that will get a minimum of six hours of direct sun when trees mature ½ court basketball (one hoop) - Bridle paths - Bocce ball - Artificial turf putting green - Exercise structure or complex (age appropriate play equipment/minimum three activities; can be integrated in structure) <u>Tier 3 amenities:</u> - Softball field - Sports court and/or 2 1/2-court basketball courts (two hoops) - Restroom area ½ scale soccer field - Exercise structure or complex (age appropriate play equipment/minimum five activities; can be integrated in structure) - Jacuzzi and separate child wading pool - Tennis court - Recreation hall with exercise equipment and/or game equipment - Exercise room - Clubhouse w/ kitchen - Swimming pool (GP Policy- Housing element HE-4)	
Water Conservation in Landscaping: The project has provided landscape and irrigation plans demonstrating compliance with Morgan Hill Municipal Code Chapter 18.148 (Water Conservation in Landscaping). (GP Policies NRE-6.6 and NRE-7.3)	
Landscaping Plan: The Project is required to provide detailed landscape plans in compliance with Section 18.64.040 (Landscape Plan required) of the Morgan Hill Municipal Code. Landscape plans must demonstrate compliance with Section 18.64.060 (General landscape requirements) of the Morgan Hill Municipal Code. Pursuant to Morgan Hill Municipal Code section 18.64.050: - All required front and street side setback areas, excluding areas required for access to the property, shall be landscaped and maintained. - Landscaping may consist of any combination of living plants, such as trees, shrubs and grass or related natural features, such as rock, stone, or mulch.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Decorative hardscape featuring pervious materials is permitted within required landscaping areas. For projects with a proposed stormwater treatment facility(ies), the Landscaping Plan includes appropriate landscaping for all bioretention and other vegetated stormwater treatment facility(ies). For plant guidance, check the Central Coast Low Impact Development Initiative (LIDI) website at https://www.centralcoastlidi.org/landscape.php. For projects adjacent to streams, the Landscaping Plan shows the use of locally native plants for all landscaping and revegetation adjacent to a stream and within a riparian area to comply with the City's adopted Santa Clara Valley Water Resource Protection Collaborative's "Guidelines and Standards for Land Use Near Streams." A copy of the guidelines and standards can be found at https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams.	
Wildland-Urban Interface Fire Area: New developments and projects proposed within a locally adopted Wildland-Urban Interface Fire Area shall include a plan for the protection of the community from any unreasonable risks associated with the effects of wildland and urban fires. The plan shall be based upon a site-specific wildfire risk assessment that includes considerations of location, topography, aspect, flammable vegetation, climatic conditions and fire history. The plan shall address water supply, access, building ignition and fire-resistance factors, fire protection systems and equipment, defensible space and vegetation management, evacuation routes, peak load water supply requirements, and minimum road widths, as those items relate to identified fire hazards and reviewed and approved by the Fire Marshal.	
Trees: The project has identified all trees to be removed on the project landscape plan and/or grading plan, has proposed a two-to-one ratio of replacement trees, and has applied for the required Tree Removal Permit in accordance with Chapter 12.32 (Restrictions on Removal of Significant Trees) of the Morgan Hill Municipal Code. .	
Useable Private and Common Open Space: Each lot must include a private open space area, such as a private yard, porch, balcony, roof garden, or patio. Private open space must be contiguous to the unit it serves and accessible and visible from the living area of the unit. Private open space must be open air. Private open space cannot be covered by a roof by more than 50 percent of the area;	

DESIGN AND DEVELOPMENT STANDARD					PROJECT COMPLIES
however, balconies can have up to 100 percent ceiling coverage. The following private open space is required per unit type:					
a. Single-family attached and detached units meeting the following average lot sizes shall provide useable open space as specified:					
	Average Lot Area (square feet)				
	1,440-1920	1,920-2,999	3,000,4,356	4,357-6,999	
Private Open Space	60 square feet per unit	150 square feet per unit	300 square feet per unit	350 square feet per unit	
Common Open Space	140 square feet per unit	150 square feet per unit	175 square feet per unit	200 square feet per unit	
b. Single-family detached (lots 7,000 square feet and over)- 500 square feet per unit (Private Open Space)					
c. Multi-family residential – At least fifty percent of the units have at least 48 square feet per unit (Private Open Space). Fifteen percent of the site area shall be dedicated to common open space.					
d. If On-site Recreational Amenities are not provided, private and common open space shall be increased by 25 percent.					
Common open space shall be fully landscaped and accessible to all residents.					
Private open space per unit may be reduced by up to 25 percent if off-set by the equivalent increase in common open space with amenities. (GP Policy CNF-11.29)					
PARKING IMPROVEMENTS					
Required On-site Parking Spaces: The project complies with the parking requirements specified in Section 18.72.030 of the Morgan Hill Municipal Code.					
Parking Design and Development Standards: The project complies with the parking design and development standards specified in Section 18.72.060 of the Morgan Hill Municipal Code.					
Parking Lot Layout: For multi-family projects, the parking for the project is dispersed throughout the project in smaller segmented parking areas, rather than the creation of a large parking lot. Parking is located interior to or at the back of the site where it is not visible to the street.					
Bicycle Parking and Storage: All multi-family developments of five units or more are required to provided bicycle parking in compliance with Section 18.72.080 of the Morgan Hill Municipal Code.					

CITY OF MORGAN HILL RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS
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DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Exterior Parking Lot Lighting: For projects with more than six parking spaces, detailed lighting information is provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed.	
Parking Area Landscaping: Projects with six or more parking spaces must demonstrate compliance with the parking lot screening and parking lot landscaping requirements specified in Sections 18.72.060.I (Parking design) and 18.72.070 (Parking lot landscaping) of the Morgan Hill Municipal Code.	
Pedestrian Access: Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements specified in Section 18.72.060.H of the Morgan Hill Municipal Code.	
Electric Vehicle Charging Stations: Parking lots with more than twenty-five parking spaces shall incorporate electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code.	
ARCHITECTURAL DESIGN FEATURES	
Front Porches: 50 percent of homes facing a street or common interior courtyard include a front porch on the ground floor with a minimum size of 6 feet by 5 feet.	
Balconies: 25 percent of homes facing a street, alley or common interior courtyard include a balcony overlooking a common area with a minimum size of 6 feet by 4 feet.	
Fences: All fences and walls designed for screening purposes shall be of solid material. Chain link or chain link with slats is not permitted.	
360 Degree Architecture: The project includes two of the following details: Windows, shutters, awnings, bay windows, trellis features, texture variations, stone, brick or other material enhancements. All facades (sides and rear) must have the level of detail, and materials incorporating at a minimum of two elements of the front façade. There shall be no blank walls. (GP Policy CNF-11.16)	
Exterior Treatments and Materials: At least two materials shall be used on any building facade, in addition to glazing and railings. Any one material must comprise at least 20% of any building facade, excluding windows and railings. A change in material must be offset by a minimum of six inches in depth.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Exterior finish materials should be chosen and applied to not appear artificial as in the case of brick veneer applied on a single building face so that it is obviously ¼ inch thick when viewed from the side, or in the case of a trellis made of 2 inch x 2 inch or 2 inch x 4 inch members. Veneers are required to turn corners, avoiding exposed edges.	
Roof line Variation for three or more units: Roofs have been designed to incorporate a minimum of two varying roof heights or types (hip, gable, shed, flat, etc.)	
Height and Project Massing: Project design minimizes bulk of the buildings by limiting building length, or designing buildings with the following special features to break up building bulk, including: a. Changes in roof form and height; and, b. Major full-height recesses (At least 10 feet deep for multi-family projects and three feet deep for single-family attached projects) along the length of the building that successfully break the building into smaller discrete masses. (General Plan Policy CNF 11.22)	
Separate Structures-Attached Projects: Large projects shall be divided into separate structures. The maximum number of units per structure is as follows: a. Single-family Attached: 7 units maximum per structure (General Plan Policy CNF 11.22) 100 percent affordable projects are exempt from this requirement	
Building Colors: The project has provided a sample color palette of complimentary colors compatible with surrounding neighborhood. The number of colors appearing on any building exterior is limited to no more than four colors or tones of the same color, including trim and accent colors. a. The use of fluorescent or neon colors is prohibited.	
Window Design: The window recesses, trim and other window elements have been designed to be substantial in depth to create shadows. The project incorporates at least one of the following window features throughout the project: a. Minimum depth of at least 1 1/2 inches from glass to exterior of trim; b. Minimum depth of at least six inches from glass to wall edge around windows if there is no trim (this is only appropriate for certain architectural styles such as Spanish Revival or Modern); or,	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
c. Decorative trim elements that add detail and articulation, such as window surrounds with at least a two-inch depth. They must be designed as an integral part of the design.	
Glazing: Mirrored glass is prohibited in order to minimize off-site glare and maximize transparency.	
Exterior Lighting and Illumination: Wall-mounted lights or bollards shall be provided for security purposes. Lights shall be directed down and shielded to avoid glare impacts. The project has demonstrated compliance by submittal of a photometric plan and fixture details.	
Equipment Screening: All exterior mechanical and electrical equipment shall be screened or incorporated into the design of buildings so as not to be visible from the public-right-of-way, common areas, or contained within an enclosed structure. Equipment to be screened includes, but is not limited to, all roof mounted equipment, air conditioners, heaters, utility meters, cable equipment, telephone entry boxes, backflow preventions, irrigation control valves, electrical transformers, pull boxes, and all ducting for air conditioning, heating, and blower systems. Screening materials shall be consistent with the exterior colors and materials of the building, and equipment enclosures have been screened with landscaping. Chain link fencing with wood inserts shall not be used to screen equipment.	
Residential Parking Garages: The project is designed to reduce the prominence of garage doors through one or more of the following strategies: a. Locate the garage door behind the front porch and/or living space, relative to the front lot line; b. Design the second floor to overhang beyond the garage door; c. Locate the garage to the side or rear of building rather than at the center; or d. For garages with three or more non-tandem parked cars, the area of the front wall(s) of garage(s) shall not be more than 25 percent of the cumulative exterior front walls of two story single family residential building; no more than 50 percent of the cumulative exterior front walls of a one story single-family residential building; and at least one front wall of the a three car garage must be separated from the remaining garage front wall by at least two feet. (GP Policy CNF-11.19)	
Driveway/Vehicle Pavement: For detached single-family projects, paved areas and hard surface for vehicle access and parking does not occupy more than 50 percent of the front and street-side setback area.	
Pavement Design: The project has incorporated decorative, pervious paving into paved and landscaped areas by 10 percent to reduce the visual impact of paved	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
surfaces. Decorative paving includes: brick, stamped colored concrete, stone blocks or pavers, interlocking colored pavers, grasscrete, and other comparable materials. Priority locations for decorative paving may include the following: a. The first 20 feet of the driveway closest to the street; b. A four-foot wide pedestrian path along the length of the driveway, if no sidewalk is provided; c. Parking maneuvering areas; d. Parking aprons; and e. Parking areas or fire turnarounds that can also occasionally function as outdoor courtyards.	
Multi-family Roof Form: The roof element of the multi-family project is designed such that no more than two side-by-side units are covered by one unarticulated roof. Articulation may be accomplished by changing roof height, offsets, and direction of slope, and by introducing elements such as dormers, towers, or parapets. Other alternative design approaches that achieve the same goal of breaking down building masses into small individual units may also be acceptable, for example shifting the units in section and varying the design treatment for individual units. (GP Policy CNF-11.22)	
Massing for three story buildings or taller: Buildings three stories or taller shall have major massing breaks at least every 100 feet along any street frontage, adjacent public park, publicly accessible outdoor space, or designated open space, through the use of varying setbacks and/or building entries. Major breaks shall be a minimum of 30 inches deep and four feet wide and extend the full height of the building.	
Distinct material changes for three story buildings or taller: Buildings three stories or taller must provide a ground floor elevation that is distinctive from the upper stories by providing a material change between the first floor and upper floors along at least 75% of the building façade with frontage upon a street, adjacent public park or public open space.	
Trash Enclosure, Solid Waste and Recyclable Materials: Detailed enclosure plans are required for multi-family, new construction and alteration projects, and comply with the following: a. The exterior materials and colors of the enclosure walls shall match the building walls. b. Chain link fencing with or without wooden/plastic slats is prohibited. c. Roofs shall be painted with rust-inhibitive paint. d. Shall not obstruct on-site or off-site pedestrian or vehicle traffic movement.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
If project requires a consolidated solid waste plan, the project shall comply with the enclosure and development guidelines specified by Recology South Valley. All trash enclosure areas must meet the following structural or treatment control Best Management Practices (BMP) requirements (individual single-family residences are exempt from these requirements): a. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents. b. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash. c. Doors: Trash enclosure shall have door(s) which can be secured when closed. d. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure. e. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.	

B. Engineering-Land Development Requirements

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
SITE PLANNING	
Arterial Design and Landscaping: Development adjacent to arterial streets is designed without fences or walls (unless required for sound mitigation as determined by an Acoustical Analysis) or landscape designed wall not exceeding three feet in height. (GP Policy TR-3.20) Development adjacent to arterial streets with existing median without landscaping provides the required landscaping in the median. The median improvements will be subject to City reimbursement in the form of credits against the Traffic Impact Fees due from the project. The project shall be reimbursed the actual consultant fees, review fees, permit fees, and construction costs of construction the median improvements. Refer to the City's Median Design Guidelines. (GP Policy CNF-8.10)	
Street Improvements: New public and private streets serving the project are designed to be consistent with the General Plan Transportation Element as well	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
as the Street Standard Details in the City's Standard Details. Minor variations and exceptions to the standards are subject to the approval of the City Engineer. The project installs and dedicates street improvements including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting.	
Utility Location and Easement: New utility transformers are installed underground unless precluded by physical limitations of the project site. Utility locations do not interfere with the viability of tree maturity, function of stormwater treatment facilities, or use of open space. A Public Service Easement (P.S.E.) with a minimum width of 10' is provided adjacent to all public rights-of-way for public and private utilities (including gas, electric, telephone and cable communications conduits or duct banks). All public utilities for sewer, storm, or water within the project are within a public right-of-way or within a P.S.E. granted to the City and within a minimum width of twenty (20) feet. Exceptions to the easement width are subject to the approval of the City Engineer. For individual water, sewer or storm mains, the pipe is located in the centerline of the P.S.E. A plat and legal description of the P.S.E., prepared by a licensed professional land surveyor or engineer in the State of California, are provided.	
Undergrounding Utilities: All new utility distribution and service connections are placed underground. This standard does not apply to aerial power transmission lines. All existing overhead utilities adjacent to any site boundary, within the project site, or along any street frontage are placed underground in accordance with City standards and affected utility company guidelines.	
Meter Location: Water meters shall be located within City right-of-way or within a recorded Public Service Easement (P.S.E). Each unit within a multi-family development shall be required to have a separate water service connection and city meter unless private sub-meters are installed for each unit by the developer.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES																			
All single-family residential units shall be required to have a separate water service connection and city meter.																				
Stream Channel and Riparian Setbacks: If the project is located adjacent to a Category 1 or Category 2 stream (as verified by a biologist, hydrologist or other qualified professional) and the required setbacks have been identified on the project plans. (GP Policy NRE-5.6) <table><tr><th colspan="4">TABLE NRE-1 REQUIRED STREAM SETBACK DISTANCES</th></tr><tr><th></th><th colspan="2">Category 1 Streams (Water Present Year Round During Normal Rain Years)</th><th>Category 2 Streams (Water Present During the Wet Season Only During Normal Rain Years)</th></tr><tr><th>Slope</th><th>Inside Urban Service Area</th><th>Outside Urban</th><th>Inside/Outside Urban Service Area</th></tr><tr><td>0-30%</td><td>100 feet</td><td>150 feet</td><td rowspan="2">35 feet</td></tr><tr><td>>30%</td><td>150 feet</td><td>200 feet</td></tr></table> All stream channels and riparian setbacks have been identified on the Site Development Plans. Documentation shall be provided by a biologist, hydrologist or other qualified professional identifying the Category of the waterbody and the required setbacks. The project is also in substantial conformance with the adopted User’s Manual of Guidelines and Standards for Land Use Near Streams (a Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County). A copy of the manual can be viewed at https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams.	TABLE NRE-1 REQUIRED STREAM SETBACK DISTANCES					Category 1 Streams (Water Present Year Round During Normal Rain Years)		Category 2 Streams (Water Present During the Wet Season Only During Normal Rain Years)	Slope	Inside Urban Service Area	Outside Urban	Inside/Outside Urban Service Area	0-30%	100 feet	150 feet	35 feet	>30%	150 feet	200 feet	
TABLE NRE-1 REQUIRED STREAM SETBACK DISTANCES																				
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Slope	Inside Urban Service Area	Outside Urban	Inside/Outside Urban Service Area																	
0-30%	100 feet	150 feet	35 feet																	
>30%	150 feet	200 feet																		
Landscaping-Parkway/Park Strip Design: A minimum 5-foot wide planted parkway (measured from face of curb) with irrigation system shall be provided between the street and sidewalk. Parkway shall be planted with street trees identified within the City of Morgan Hill Master Street Tree Plan. For parkways within a public right-of-way, the City Engineer or designee shall select the species from the applicable planting zone list of the Master Street Tree Plan.																				

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
PEDESTRIAN, BICYCLE AND TRANSIT IMPROVEMENTS	
Projects abutting developed land: The project aligns and connects streets intersecting the project boundary with all adjoining streets. (GP Policy CNF-11.5)	
Projects abutting undeveloped land: The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development. (GP Policy CNF-11.5) The project has provided a public access easement in private streets for sidewalks, trails, greenways, and other pedestrian and bicycle facilities.	
Off-street bicycle and pedestrian connections: The project has provided off-street bicycle and pedestrian connections in accordance with the Bikeways, Trails, Parks and Recreation Master Plan, as well as General Plan Policy CNF-11.5 Outside Connections and General Plan Policy CNF-11.6 Open Space Connections. Connections must be established and maintained through a public access easement, dedication or other similar method to guarantee it remains accessible to the general public. Off-street bicycle and pedestrian accessways are at least 15 feet wide, have no horizontal obstructions, and have a minimum of 9 feet-6 inches high vertical clearance. For off-street bicycle and pedestrian accessways that also serve as emergency vehicle accesses or utility corridors, the minimum accessway width and vertical clearance is subject to approval by the City's designated Fire Marshal. If the off-street bicycle and pedestrian accessway remains in private ownership, recordation of a maintenance agreement is required prior to acceptance of the street improvements. All easements and dedications will be required as Conditions of Approval.	
Complete Streets: The project incorporates design elements from three different categories of "Complete Street Design Elements" (shall provide a minimum of two design elements from categories a to e below) that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities. (GP Policy CNF-11.8)	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
NOTE: These standards apply to projects with new public streets, new private streets and/or private drives and for projects required to perform major changes to existing public or private streets. <u>Complete Street Design Elements</u> a. Pedestrian infrastructure such as sidewalks; traditional and raised crosswalks; median crossing islands; Americans with Disabilities Act of 1990 compliant facilities including audible cues for people with low vision, pushbuttons reachable by people in wheelchairs, and curb cuts; and curb extensions subject to approval by the City Engineer or designee. b. Traffic calming measures to lower speeds of automobiles and define the edges of automobile travel lanes, including a road diet, center medians, traffic circles, narrow travel lanes, bulbouts, shorter curb corner radii, elimination of free-flow right-turn lanes, angled and face-out parking subject to approval by the City Engineer or designee. c. Bicycle accommodations, such as protected or dedicated bicycle lanes, neighborhood greenways, wide paved shoulders, and bicycle parking subject to approval by the City Engineer or designee. d. Public transit accommodations, such as bus pullouts, transit signal priority, bus shelters, and dedicated bus lanes. Refer to the Santa Clara Valley Transportation Authority (VTA) Bus Stop and Passenger Facilities Standards for the design and placement of bus-related facilities and amenities. Transit improvements within the public right-of-way are subject to approval by the City Engineer or designee. e. Green Streets, the natural systems approach (incorporates vegetation and/or permeable pavements) to enhance pedestrian safety, reduce stormwater flow and improve water quality. Green Streets are designed to capture rainwater at its source. Green Street improvements subject to approval by the City Engineer or designee.	
Bicycle and pedestrian improvements (Multi-family projects): The project incorporates <u>two or more</u> enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage. (GP Goals TR-8 and TR-9)	
Internal pedestrian connections: The project provides pedestrian connections from all entrances to common open space, recreation facilities, and other project amenities.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Continuous Sidewalks: The project provides continuous sidewalks along both sides of the street frontage(s). (GP Policy CNF-11.9) The project shall demonstrate compliance with Chapter 17.34 – Standards for Residential and Private Streets of the Morgan Hill Municipal Code by providing detached sidewalks and park strips, as required for primary residential streets, secondary residential streets and cul-de-sacs.	
MUNICIPAL INFRASTRUCTURE	
Water Infrastructure: The project provides local water distribution lines to serve the proposed project and designed in accordance with accepted engineering principles and shall conform to the City's Design Standards and Standard Details. All unused existing water services stubbed to the property shall be abandoned at the water main pursuant to city standards. Note: For corner parcels, where existing water services are stubbed to the property along both street frontages; the water services along the secondary street shall be utilized and the remaining unused existing water services shall be abandoned at the water main pursuant to city standards. The project proposes water infrastructure improvements consistent with the City's Water System Master Plan, approved by the City Engineer or designee.	
Wastewater infrastructure: A sufficient wastewater collection system is provided to serve the proposed project and designed in accordance with accepted engineering principles and shall conform to the City's Design Standards and Standard Details. All unused existing sewer laterals stubbed to the property shall be abandoned at the sewer main per city standards. Note: For corner parcels, where existing sewer laterals are stubbed to the property along both street frontages; the sewer lateral(s) along the secondary street shall be utilized and the remaining unused existing sewer lateral(s) shall be abandoned at the sewer main per city standards. The project proposes wastewater infrastructure improvements consistent with the City's Sewer System Master Plan, approved by the City Engineer or designee.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
(GP Policy NRE-8.4)	
Storm Drainage Infrastructure: A sufficient storm drainage collection system is provided to serve the project and designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. (GP Policies SSI-16.2 and SSI-16.3) The project proposes storm drainage infrastructure improvements consistent with the City's Storm Drainage Master Plan. The project has demonstrated compliance by providing a complete storm drainage study showing amount of run-off and existing and proposed drainage structure capacities reviewed and approved by the City Engineer or designee.	
Storm Water Infrastructure: If the project is creating and/or replacing 2,500 square feet or more of impervious surface, project complies with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. A copy of the guidance manual can be obtained through the following link: https://www.morgan-hill.ca.gov/DocumentCenter/View/12671/Storm-Water-Management-Guidance-Manual?bidId=. The project has demonstrated compliance by providing a Stormwater Runoff Management Plan/Report, Stormwater Control Plan sheet, and all applicable stormwater performance certifications pursuant to the Stormwater Management Guidance Manual and reviewed and approved by the City Engineer or designee. (GP Policies SSI-16.2 and SSI-16.3)	
Floodplain Development: If the project is located within an area identified as Special Flood Hazard Areas or Floodway areas as shown on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs), the project is subject to the floodplain management regulations specified in Chapter 15.80 (Flood Damage Prevention) of the Morgan Hill Municipal Code. The project has provided the required development review information for Floodplain Administrator review. (GP Policies SSI-5.1, 5.2, 5.3, 5.6, 5.7 and 5.8)	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
The Floodplain Administrator has reviewed the required development review information and has determined that the project complies with Chapter 15.80 of the Morgan Hill Municipal Code. If the project includes the placement of fill, a flood study is submitted for review and City acceptance. Project is required to file the appropriate conditional/final FEMA Letter of Map Revision (CLOMR/LOMR or CLOMR-F/LOMR-F) as required by the results of the flood study.	
Broadband Connectivity: The project provides the following broadband connectivity to the project: a. Broadband conduit installed in the public right-of-way to serve the project. b. Broadband conduit from the public right-of-way to each home or occupied building in the project. c. Pre-install indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit. (GP Action Items SSI-18.A and SSI-18.B)	

VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Morgan Hill must conduct environmental analysis before a project is approved. An 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 Map, Design Review Permit, or a building or grading permit.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ACCEPT SEPTEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the three months ended September 30, 2019. Overall, the City received 16% of the budgeted revenues for all funds, reflecting a delay in remittances which is typical for the first quarter of the year. The amount received year to date for all funds is approximately \$3.3 million or 14% lower than prior year at this time, primarily due to a decrease in Capital Projects Funds revenues of \$2.8 million.

General Fund revenues totaled \$5.2 million and General Fund expenditures totaled \$10.4 million, or 24% of the budget. Expenditures, including encumbrances amounted to \$12.7 million or 29% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers, such as Chrisp Company for the City's streets maintenance services, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

Community Development Fund revenues totaled \$1.1 million, or approximately 21% of the budget. The amount received to date is approximately \$278,000 less than the prior year. Expenditures and encumbrances totaled \$1.9 million, or approximately 33% of the budgeted appropriation.

Enterprise Funds revenues which comprised of Water and Sewer totaled \$8.5 million or 21% of the budget, a slight increase of \$284,000 or 3% from a year ago at this time.

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 2 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 August 22, 2019 through November 4, 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 quarterly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be 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. September 2019 Financial Statement Analysis
2. September 2019 Financial and Investment Report
3. Presentation - 1st Qtr FY19-20 Financial Report

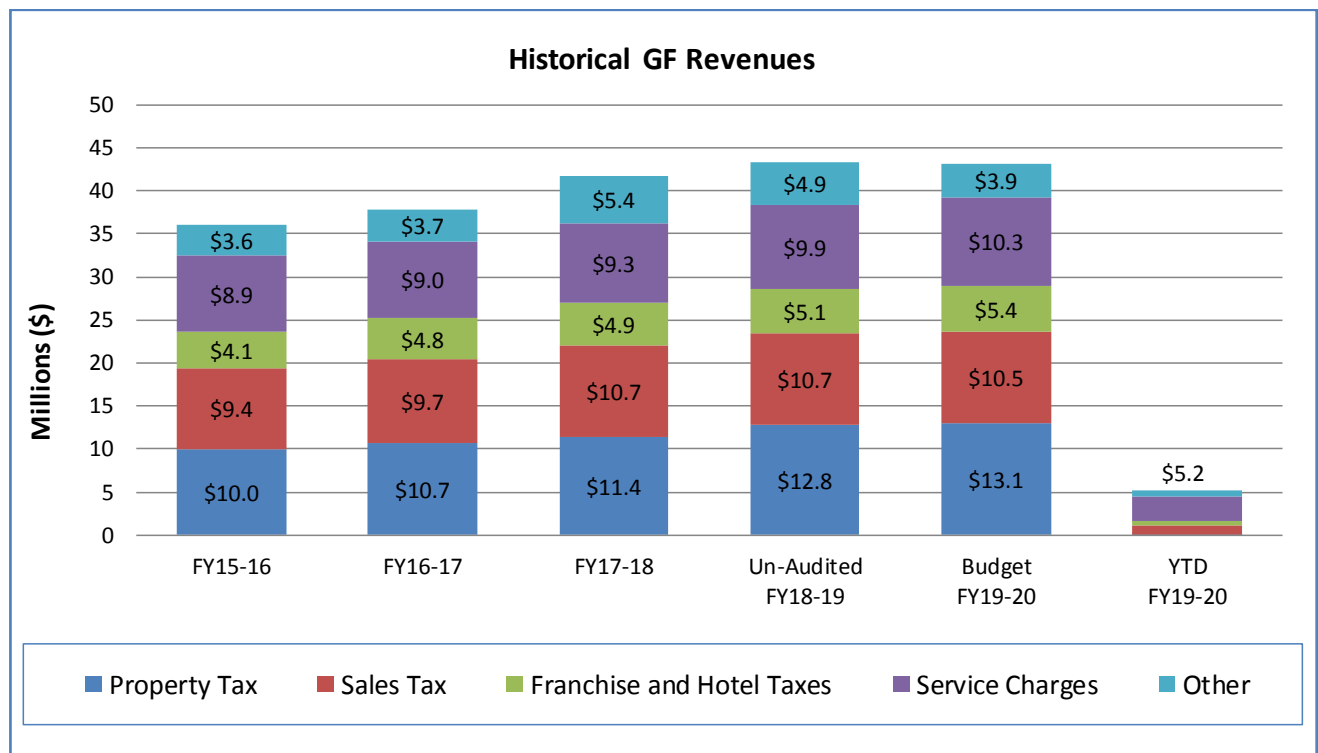


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED SEPTEMBER 2019 – 25% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of September totaled \$5.2 million, or 12% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the County's most recent estimate projected Morgan Hill property tax revenue, excluding the property transfer tax, at \$14.0 million for the fiscal year 2019-20, which is approximately \$900,000 more than the revised budget, partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution and former Redevelopment Agency (RDA) residual apportionment. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Former RDA residual apportionment is the residual amount paid to the taxing entities after sufficient funds had been set aside to pay for former RDA enforceable obligations. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 30% of the approximately \$43.1 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 57% of the budgeted amount as annual business license renewal payments are usually received in the first few months of the fiscal year.

The chart below shows historical General Fund revenues by major revenue category from FY15-16 through FY17-18 Actual, Un-audited FY18-19, FY19-20 Budget, and YTD as of September 30, 2019.

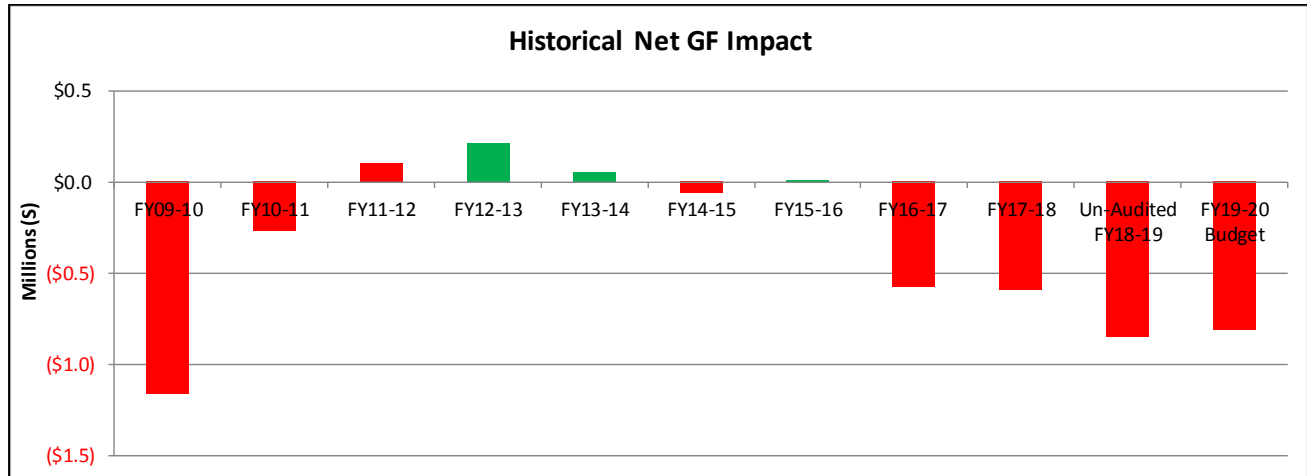


General Fund expenditures and encumbrances as of September 30, 2019 totaled \$12.7 million, of which approximately \$2.3 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED SEPTEMBER 2019 – 25% OF YEAR COMPLETE

- **Community Services** - The Community Services Department’s recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.4 million through the month of September. Without the carry-over encumbrances, through the month of September operations resulted in a small positive impact to the general fund of approximately \$63,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City’s recreation operations are not charged for indirect costs (known in Morgan Hill as “General Fund Administration”) from the central services departments of City Attorney, City Manager, and Administrative Services. The City’s other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City’s indirect cost allocation plan, prepared in compliance with the Federal government’s OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through September totaled \$1.1 million. Expenditures, including encumbrances, totaled \$1.9 million. Without the outstanding encumbrances, however, expenditures through the month of September amounted to \$1.2 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$0.6 million, a slight improvement from prior year un-audited actual deficit of approximately \$0.7 million. The projected deficit 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.
- **Debt Service Funds** – Expenditures through the month of September totaled \$3,477. 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.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED SEPTEMBER 2019 – 25% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through the month of September totaled \$1.7 million. Expenditures and outstanding encumbrances totaled \$3.1 million or approximately 26% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY15-16 through FY17-18 Actual, Un-audited FY18-19, FY19-20 Budget, and YTD as of September 30, 2019.

(amount in millions)	FY15-16	FY16-17	FY17-18	Un-Audited FY18-19	Budget FY19-20	YTD FY19-20
Revenues	10.2	9.7	10.3	11.4	12.1	1.7
Expenditures	12.0	9.8	10.8	10.6	12.1	3.1
Operating Margin	(1.8)	(0.1)	(0.5)	0.8	-	(1.4)
Operating Margin without Encumbrances	(1.8)	(0.0)	(0.3)	1.2	-	(0.8)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of September totaled \$2.7 million. Water Operations expenditures, including outstanding encumbrances, totaled \$5.0 million for the year. Without the encumbrances, however, the expenditures amounted to \$3.1 million. The table below shows Water Operations revenues and expenditures from FY15-16 through FY17-18 Actual, Un-audited FY18-19, FY19-20 Budget, and YTD as of September 30, 2019.

(amount in millions)	FY15-16	FY16-17	FY17-18	Un-Audited FY18-19	Budget FY19-20	YTD FY19-20
Revenues	8.5	10.9	13.0	14.2	14.8	2.7
Expenditures	9.7	11.2	12.1	12.9	15.1	5.0
Operating Margin	(1.2)	(0.3)	0.9	1.3	(0.3)	(2.3)
Operating Margin without Encumbrances	(1.2)	(0.1)	1.4	2.2	(0.3)	(0.4)

- **Investments** – Two securities were called during the month of September 2019. Total interest earnings received on investments were \$107,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
September 30, 2019 - 25% of Year Complete

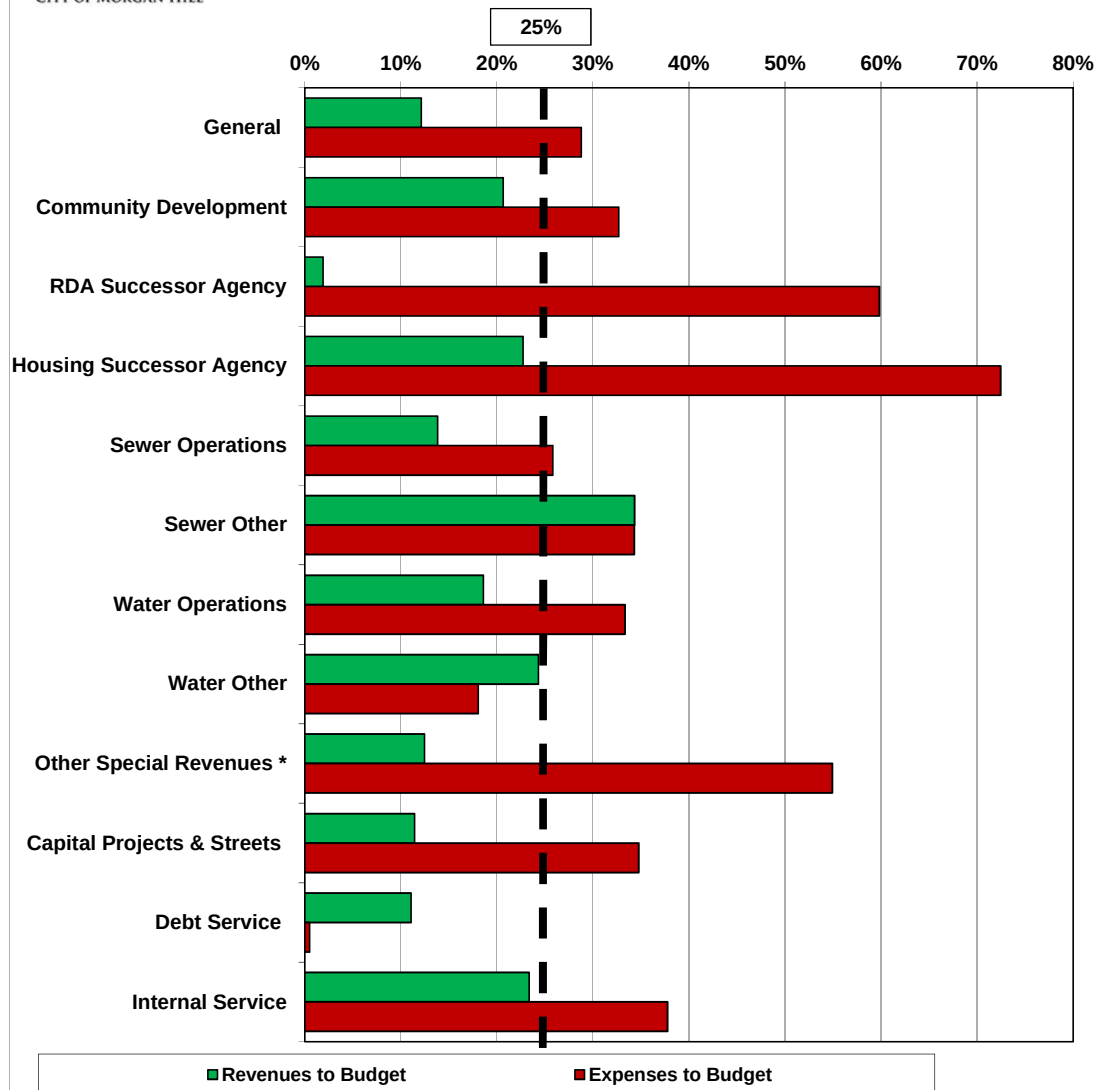


CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



Morgan Hill YTD Revenue & Expense Summary September 30, 2019 - 25% of Year Complete



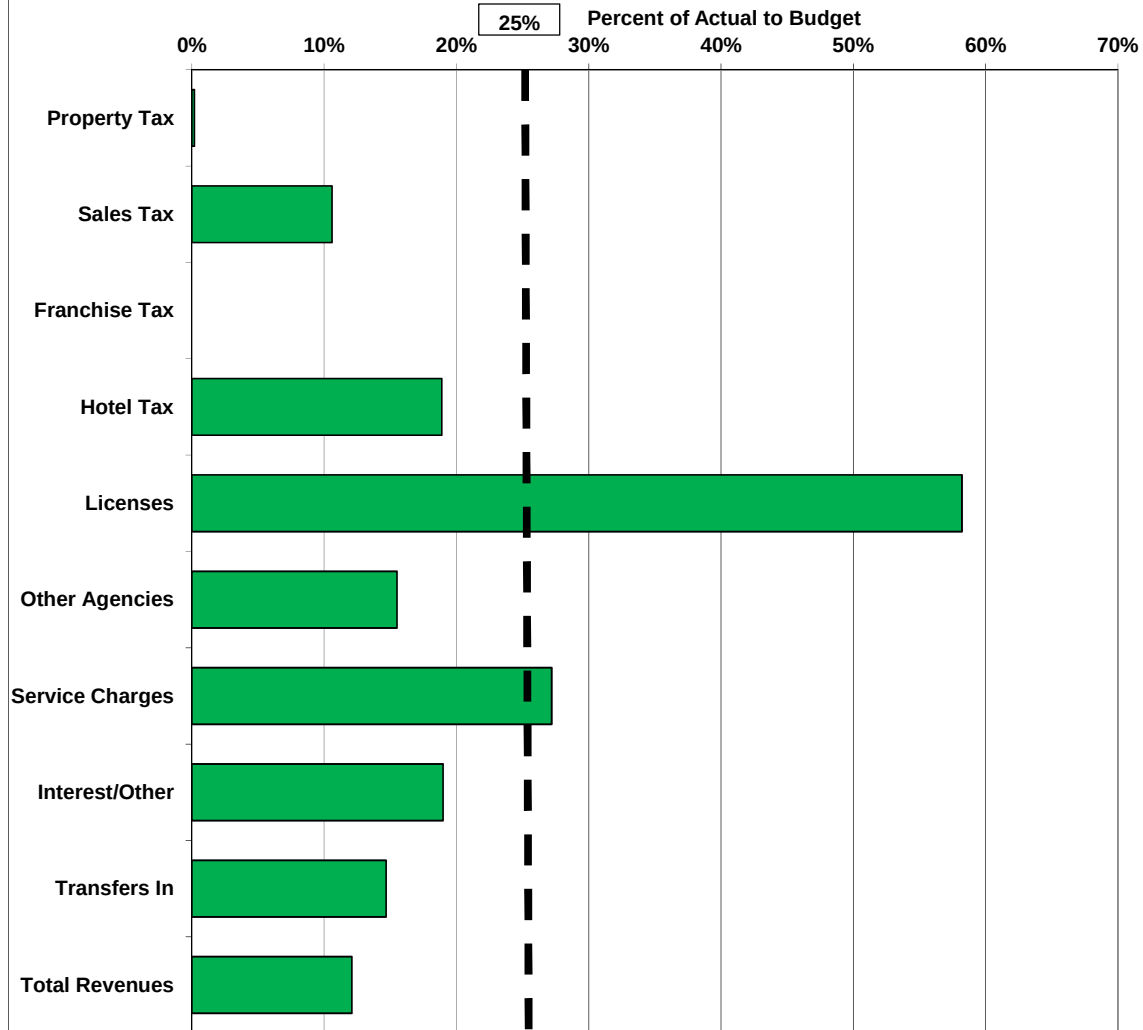
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 5,235,105	12%	\$ 12,667,759	29%
Community Development	1,088,400	21%	1,912,260	33%
RDA Successor Agency	133,065	2%	4,170,587	60%
Housing Successor Agency	125,892	23%	678,141	72%
Sewer Operations	1,678,014	14%	3,122,359	26%
Sewer Other	2,732,498	34%	5,669,093	34%
Water Operations	2,747,840	19%	5,034,721	33%
Water Other	1,301,918	24%	857,595	18%
Other Special Revenues *	481,457	12%	1,293,241	55%
Capital Projects & Streets	2,392,462	11%	7,287,792	35%
Debt Service	75,174	11%	3,477	1%
Internal Service	2,783,270	23%	4,122,248	38%
TOTAL FOR ALL FUNDS	\$ 20,775,094	16%	\$ 46,819,274	33%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.



Morgan Hill YTD General Fund Revenues

September 30, 2019 - 25% of Year Complete

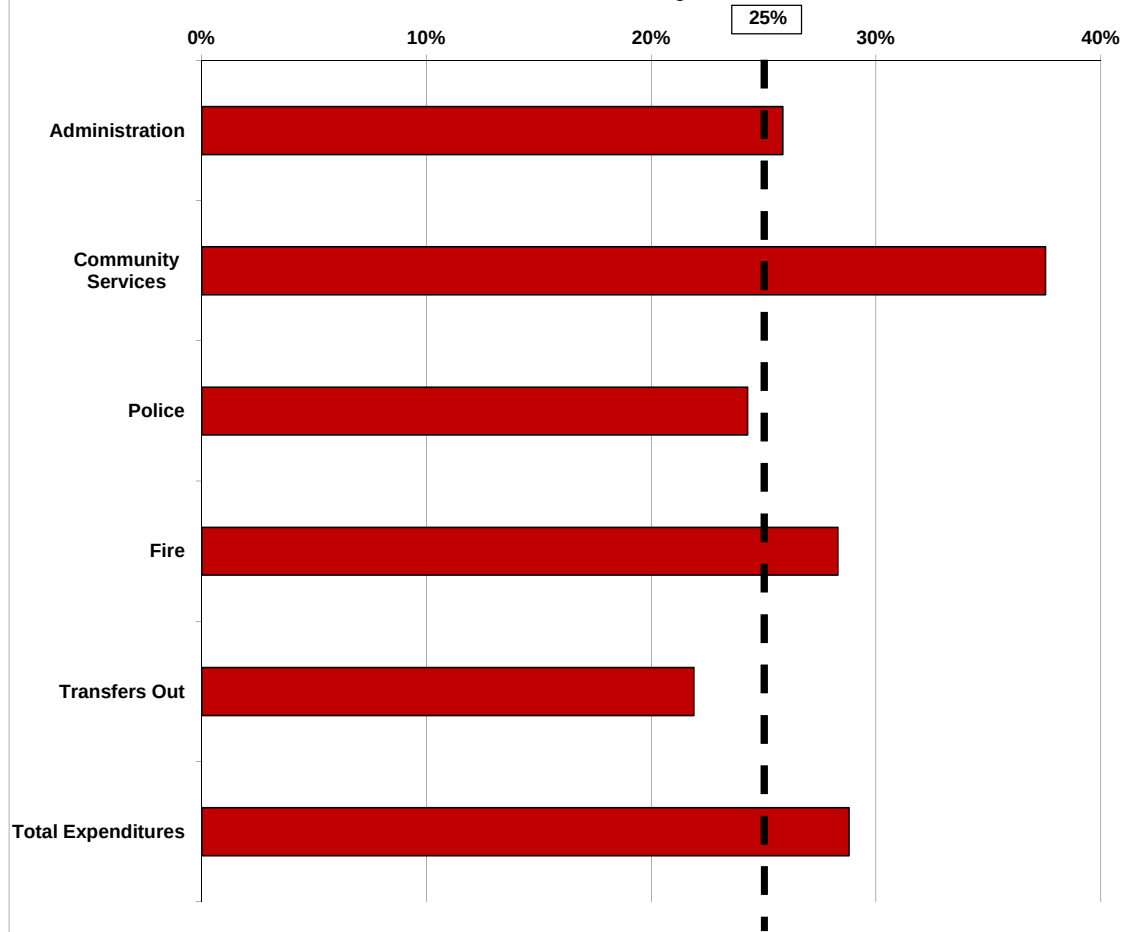


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$13,082,377	\$ 24,485	0%	\$ 103,321	-76%
Sales Tax	10,476,000	1,105,756	11%	991,931	11%
Franchise Tax	2,319,566	-	-	-	N/A
Hotel Tax	3,080,880	583,038	19%	510,945	14%
Licenses	206,940	120,504	58%	178,183	-32%
Other Agencies	403,389	62,570	16%	124,547	-50%
Service Charges	10,267,724	2,790,139	27%	2,688,112	4%
Interest/Other	1,461,324	277,691	19%	334,051	-17%
Transfers In	1,847,658	270,922	15%	199,689	36%
TOTAL REVENUES	\$43,145,858	\$ 5,235,105	12%	\$ 5,130,780	2%



Morgan Hill YTD General Fund Expenditures September 30, 2019 - 25% 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	\$ 4,835,112	\$ 1,250,084	26%	\$ 1,445,109	-13%
Community Services	12,679,427	4,760,314	38%	4,433,601	7%
Police	17,372,961	4,218,214	24%	4,532,388	-7%
Fire	6,961,396	1,970,148	28%	1,845,140	7%
Transfers Out	2,142,463	468,999	22%	455,259	3%
TOTAL EXPENDITURES	\$ 43,991,359	\$ 12,667,759	29%	\$ 12,711,498	0%



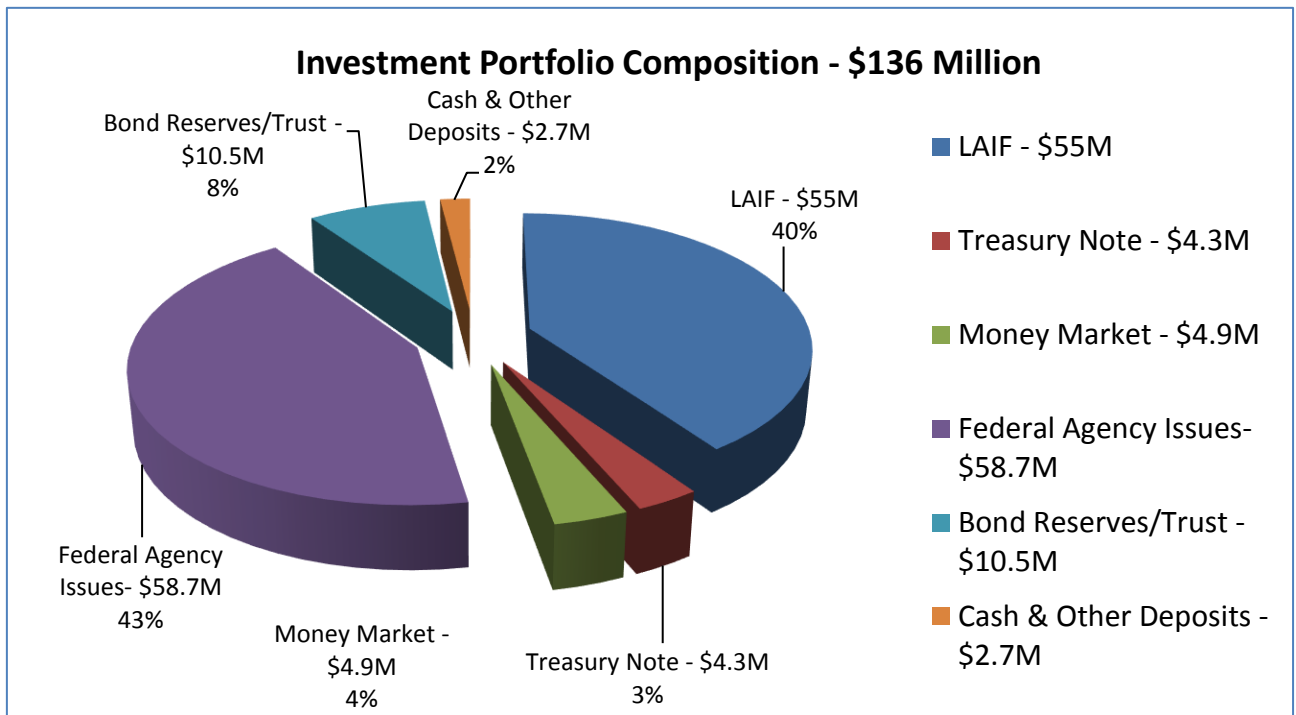
City of Morgan Hill
Recreation Report - Fiscal Year 2019-20
For the Month and Three Months Ended September 30, 2019
25% of Year Complete

	<u>Budget</u>	<u>September 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,426,631	\$ 484,659	\$ 1,876,751	
Facility Rentals	915,330	71,097	278,456	
Community Services	149,705	5,396	12,213	
Transfers in	75,000	6,250	18,750	
Total Revenues	\$ 7,566,666	\$ 567,402	\$ 2,186,170	29%
Less: Expenditures				
Membership & Program Services	\$ 6,371,297	\$ 345,273	\$ 1,643,777	
Facility Rentals	1,356,318	109,548	332,037	
Community Services	648,407	41,072	147,113	
Total Expenditures	\$ 8,376,023	\$ 495,892	\$ 2,122,927	25%
Net Impact without encumbrances	\$ (809,357)	\$ 71,510	\$ 63,243	
Encumbrances	-	-	1,507,295	
Net Impact with encumbrances	\$ (809,357)	\$ 71,510	\$ (1,444,052)	

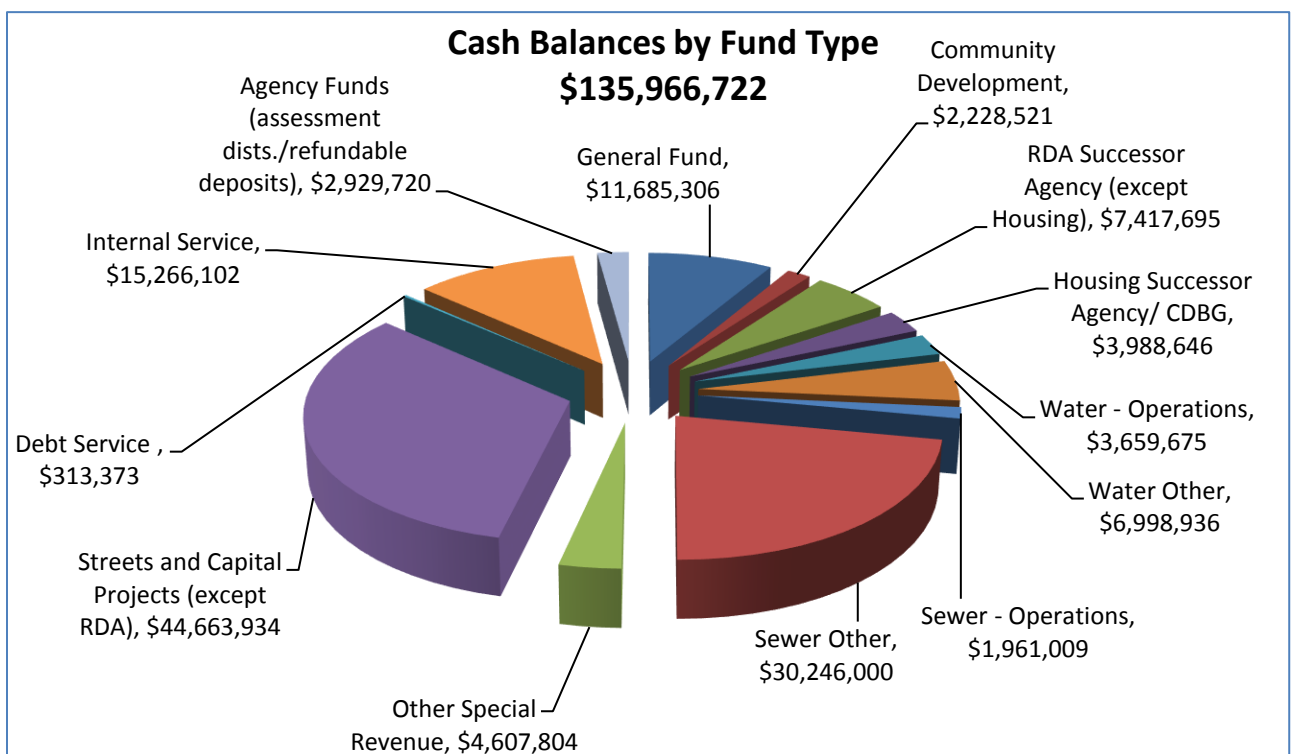
City of Morgan Hill

Monthly Investment Report - September 30, 2019

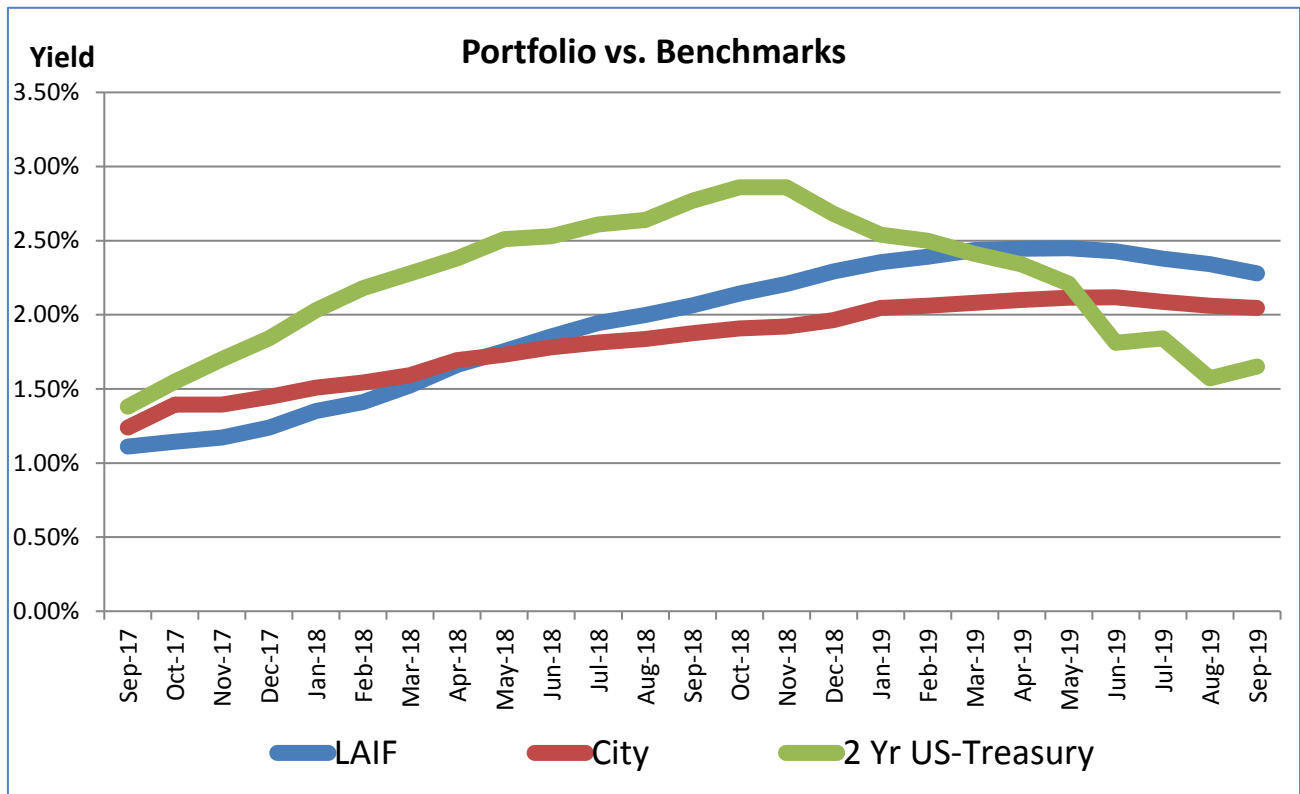
The following are the snapshots of City's investment portfolio as of September 30, 2019. The first chart shows the portfolio composition by investment type:



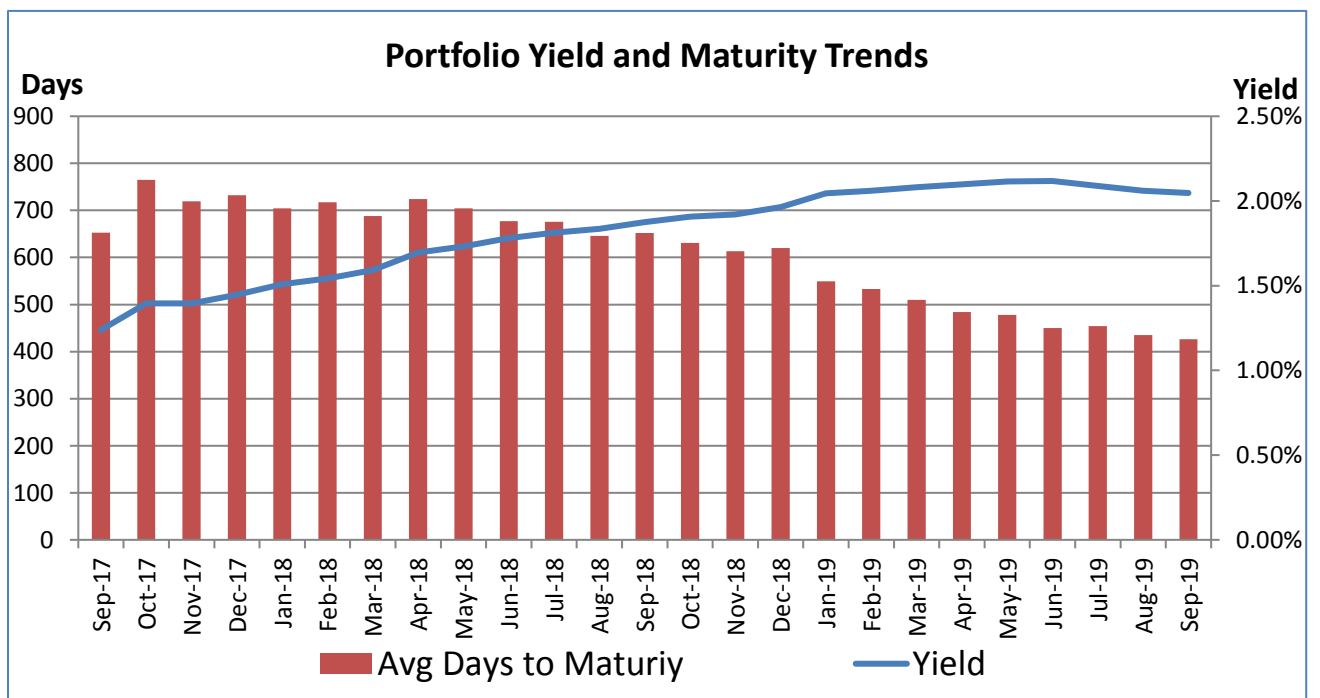
The chart below shows cash balances by fund type reconciled to City's financial system:



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 September 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		\$ 54,811,570	40.31%	\$ 54,905,396	2.28%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.94%	3,992,600	1.70%	10/19/2019	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.94%	3,981,360	1.50%	6/30/2020	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.94%	3,979,040	1.40%	8/25/2020	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.47%	1,993,380	1.65%	8/29/2020	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.94%	3,980,280	1.60%	9/29/2020	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.94%	3,982,200	1.60%	10/27/2019	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.94%	3,985,880	1.55%	10/28/2019	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.47%	1,993,560	1.65%	10/28/2019	10/28/2021
Fed Home Loan Mortgage	11/15/2016	4,000,000	2.94%	3,966,000	1.55%	10/15/2019	11/15/2021
Fed Home Loan Mortgage	11/23/2016	3,000,000	2.21%	2,990,790	1.65%	11/23/2019	11/23/2021
Fed Home Loan Mortgage	11/23/2016	4,000,000	2.94%	3,986,200	1.63%	11/23/2019	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.94%	4,000,320	1.88%	10/26/2019	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.96%	1,301,287	2.15%	8/29/2020	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.83%	3,850,154	2.15%	10/19/2019	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	3.05%	4,150,830	2.20%	10/26/2019	10/26/2022
Fed Home Loan Mortgage	7/10/2019	3,000,000	2.21%	3,005,640	2.15%	7/2/2020	7/2/2024
Fed Home Loan Bank	9/26/2018	748,456	0.55%	751,890	2.80%	3/30/2020	3/30/2020
Fed Home Loan Bank	11/6/2018	744,527	0.55%	749,490	2.87%	11/15/2019	11/15/2019
Fed Home Loan Mortgage	1/18/2019	999,519	0.74%	1,003,410	2.59%	4/23/2020	4/23/2020
Fed Farm Credit Sys Disc	4/30/2019	894,693	0.66%	896,589	2.39%	12/31/2019	12/31/2019
Treasury Note	4/30/2018	4,319,881	3.18%	4,489,650	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 63,007,077	46.34%	\$ 63,030,550	1.85%		
Money Market		\$ 4,948,397	3.64%	\$ 4,948,397	1.96%		
Total City Managed/Average		\$ 122,767,044	90.29%	\$ 122,884,343	2.03%		
Bond Reserve Accounts - Held By Trustees		\$ 7,940,642	5.84%	\$ 7,940,642			
Cash/Deposits		\$ 2,671,631	1.96%	\$ 2,671,631			
PARS Trust		\$ 2,587,404	1.90%	\$ 2,983,425			
GRAND TOTAL/AVERAGE		\$ 135,966,722	100%	\$ 136,480,042			

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF SEPTEMBER 30, 2019
FOR THE FISCAL YEAR OF 2019-20

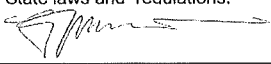
	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	2.28%	\$ 51,903,983	38.17%	\$ 51,992,832
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.28%	2,907,587	2.14%	2,912,564
Federal Issues	All Funds Pooled	1.66%	58,687,196	43.16%	58,540,900
US Treasury Notes	All Funds Pooled	2.73%	4,319,881	3.18%	4,489,650
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.96%	4,948,397	3.64%	4,948,397
	SUBTOTAL		\$ 122,767,044	90.29%	\$ 122,884,343
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	1.96%	81	0.00%	81
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.96%	103	0.00%	103
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.21%	7,421,052	5.46%	7,421,052
US Treasury Notes - Reserve Acct.	Successor Fund	1.25%	-	0.00%	-
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.96%	256,095	0.19%	256,095
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.96%	263,311	0.19%	263,311
	SUBTOTAL		7,940,642	5.84%	7,940,642
Other Cash/Deposits					
General Checking	All Funds		2,634,519	1.94%	2,634,519
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			1,787,404	1.31%	2,052,413
PARS - PENSION Trust			800,000	0.59%	931,012
	SUBTOTAL		5,259,035	3.87%	5,655,056
Total Cash and Investments			\$ 135,966,722	100.00%	\$ 136,480,042

CASH ACTIVITY SUMMARY
FY 2019-20

Fund Type	07/01/18 Unaudited Balance	Change in Cash Balance	9/30/2019 Balance
General Fund	\$ 15,044,885	\$ (3,359,579)	\$ 11,685,306
Community Development	3,419,872	(1,191,351)	2,228,521
RDA Successor Agency (except Housing)	12,277,198	(4,859,503)	7,417,695
Housing Successor Agency/ CDBG	4,150,303	(161,657)	3,988,646
Water - Operations	2,317,454	1,342,221	3,659,675
Water Other	4,954,819	2,044,117	6,998,936
Sewer - Operations	1,505,059	455,950	1,961,009
Sewer Other	29,212,866	1,033,133	30,246,000
Other Special Revenue	5,052,285	(444,481)	4,607,804
Streets and Capital Projects (except RDA)	42,155,711	2,508,222	44,663,934
Debt Service	253,454	59,919	313,373
Internal Service	12,991,987	2,274,115	15,266,102
Agency Funds (assessment dists./refundable deposits)	4,116,381	(1,186,661)	2,929,720
Total	\$ 137,452,276	\$ (1,485,555)	\$ 135,966,722

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 2019-20
For the Three Months Ended September 30, 2019
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 11,189,507	\$ 11,189,507	\$ -	0%	\$ -	\$ -	0%
Property Tax - RPTTF Residual Distribution	1,573,610	1,573,610	-	n/a	73,755	(73,755)	-100%
Property Tax - Supplemental Roll	319,260	319,260	24,485	8%	29,567	(5,081)	-17%
Sales Tax	10,091,000	10,091,000	1,076,636	11%	925,151	151,485	16%
Public Safety Sales Tax	385,000	385,000	29,120	8%	66,780	(37,660)	-56%
Transient Occupancy Taxes	3,080,880	3,080,880	583,038	19%	510,945	72,093	14%
Franchise (Refuse, Cable, PG&E)	2,319,566	2,319,566	-	0%	-	-	n/a
Property Transfer Tax	515,000	515,000	96,585	19%	108,533	(11,948)	-11%
TOTAL TAXES	29,473,823	29,473,823	1,809,865	6%	1,714,731	95,134	6%
LICENSES/PERMITS							
Business License	202,000	202,000	115,159	57%	174,878	(59,719)	-34%
Other Permits	4,940	4,940	5,345	108%	3,305	2,040	62%
TOTAL LICENSES/PERMITS	206,940	206,940	120,504	58%	178,183	(57,680)	-32%
FINES AND PENALTIES							
Parking Enforcement	8,500	8,500	1,045	12%	1,872	(827)	-44%
Bails & Fines	73,645	73,645	5,830	8%	12,186	(6,356)	-52%
Administrative Citations	9,785	9,785	10,566	108%	2,043	8,523	417%
TOTAL FINES AND PENALTIES	91,930	91,930	17,441	19%	16,101	1,340	8%
OTHER AGENCIES							
Motor Vehicle in-Lieu	24,652	24,652	-	0%	-	-	n/a
Other Revenue - Other Agencies	403,389	403,389	62,570	16%	124,547	(61,977)	-50%
TOTAL OTHER AGENCIES	428,041	428,041	62,570	15%	124,547	(61,977)	-50%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,990	33,990	1,260	4%	6,478	(5,218)	-81%
Business License Application Review	36,000	36,000	7,664	21%	13,062	(5,398)	-41%
Membership Services & Rec Programs	6,426,631	6,426,631	1,876,751	29%	1,849,254	27,496	1%
Facility Rentals	915,330	915,330	278,456	30%	282,367	(3,911)	-1%
Community Services	149,705	149,705	12,213	8%	14,375	(2,162)	-15%
General Administration Overhead	1,795,198	1,795,198	447,855	25%	426,528	21,327	5%
Other Charges Current Services	910,870	910,870	165,940	18%	96,048	69,892	73%
TOTAL CURRENT SERVICES	10,267,724	10,267,724	2,790,139	27%	2,688,112	102,027	4%
OTHER REVENUE							
Use of money/property	517,900	517,900	115,153	22%	85,049	30,104	35%
Other Revenues	311,842	311,842	48,512	16%	124,368	(75,856)	-61%
TOTAL OTHER REVENUE	829,742	829,742	163,665	20%	209,417	(45,752)	-22%
TRANSFERS IN							
One Time Transfer	180,000	180,000	44,997	25%	-	44,997	0%
Asset Seizure	-	-	-	0%	-	-	0%
Public Safety	100,000	100,000	-	0%	-	-	0%
Fire Impact	-	25,000	25,000	0%	-	25,000	0%
Streets	738,968	738,968	-	0%	-	-	n/a
Park Maintenance	-	-	-	0%	-	-	n/a
Police Impact	25,000	25,000	6,249	25%	6,249	-	n/a
Sewer Operations	351,845	351,845	87,963	25%	87,345	618	1%
Water Operations	351,845	351,845	87,963	25%	87,345	618	1%
Park Development	75,000	75,000	18,750	25%	18,750	-	n/a
TOTAL TRANSFERS IN	1,822,658	1,847,658	270,922	15%	199,689	71,233	36%
TOTAL GENERAL FUND	43,120,858	43,145,858	5,235,105	12%	5,130,780	104,325	2%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	738,968	738,968	102,476	14%	101,875	601	1%
Interest / Other Revenue/Other Charges	-	-	169	n/a	57	112	199%
202 STREET MAINTENANCE	738,968	738,968	102,645	14%	101,932	713	1%

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Three Months Ended September 30, 2019
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	135	135	134	99%	23	111	490%
Police Grant/SLEF/JAG	100,000	100,000	-	n/a	-	-	0%
205 PUBLIC SAFETY TRUST	100,135	100,135	134	0%	23	111	490%
206 COMMUNITY DEVELOPMENT							
Building Fees	3,275,864	3,275,864	810,302	25%	874,455	(64,154)	-7%
Planning Fees	1,476,912	1,476,912	216,124	15%	299,596	(83,473)	-28%
Engineering Fees	495,977	495,977	58,365	12%	190,448	(132,083)	-69%
Other Revenue/Current Charges	14,682	14,682	3,610	25%	2,293	1,317	57%
206 COMMUNITY DEVELOPMENT	5,263,435	5,263,435	1,088,400	21%	1,366,793	(278,393)	-20%
207 LONG RANGE PLANNING	736,371	736,371	169,062	23%	204,782	(35,720)	-17%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,660	3,660	91	2%	30	61	201%
215 and 216 HCD BLOCK GRANT	3,660	3,660	91	2%	30	61	201%
225 ASSET SEIZURE	2,227	2,227	187	8%	1,286	(1,099)	-85%
229 LIGHTING AND LANDSCAPE	189,158	189,158	200	0%	67	133	197%
230 COMMUNITY FACILITIES DISTRICT	44,504	44,504	152	0%	36	116	319%
232 ENVIRONMENTAL PROGRAMS	409,843	409,843	114,775	28%	121,665	(6,890)	-6%
234 MOBILE HOME PARK RENT STAB.	873	873	75	9%	20	56	282%
235 SENIOR HOUSING	4,462	4,462	328	7%	102	226	222%
236 HOUSING MITIGATION	2,336,690	2,336,690	191,643	8%	115,188	76,455	66%
240 EMPLOYEE ASSISTANCE	29,256	29,256	4,616	16%	5,700	(1,083)	-19%
247 ENVIRONMENT REMEDIATION	2,824	2,824	192	7%	64	128	200%
250 COMH-SUCCESSOR AGENCY-MHRDA	6,935,750	6,935,750	133,065	2%	862,762	(729,697)	-85%
255 HOUSING SUCCESSOR AGENCY	553,622	553,622	125,892	23%	7,415	118,477	1598%
TOTAL SPECIAL REVENUE FUNDS	17,351,779	17,351,779	1,931,460	11%	2,787,866	(856,407)	-31%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	2,647,562	2,677,562	298,094	11%	558,334	(260,240)	-47%
302 PARK MAINTENANCE	1,371,696	1,371,696	93,227	7%	231,406	(138,180)	-60%
303 LOCAL DRAINAGE	1,652,576	1,652,576	18,159	1%	311,757	(293,598)	-94%
304 LOCAL DRAINAGE/NON AB1600	83,498	83,498	2,245	3%	71,356	(69,112)	-97%
306 AGRICULTURE & OPEN SPACE PRESERVATION	3,420,324	3,420,324	425,317	12%	1,304,443	(879,125)	-67%
308 STREET CIP	5,068,938	5,068,938	388,579	8%	856,029	(467,450)	-55%
309 TRAFFIC IMPACT	1,283,196	1,283,196	594,273	46%	722,952	(128,679)	-18%
311 POLICE IMPACT	295,109	295,109	70,873	24%	87,679	(16,806)	-19%
313 FIRE IMPACT	469,220	469,220	37,254	8%	77,713	(40,459)	-52%
346 PUBLIC FACILITIES NON-AB1600	630,420	630,420	-	n/a	93,952	(93,952)	-100%
347 PUBLIC FACILITIES IMPACT	221,932	221,932	70,086	32%	58,736	11,349	19%
348 LIBRARY	936,224	936,224	100,941	11%	226,659	(125,717)	-55%
350 UNDERGROUNDING	50,079	50,079	1,238	2%	133,662	(132,424)	-99%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	656,864	656,864	7,078	1%	5,691	1,386	24%
360 COMMUNITY/REC IMPACT FUND	1,359,693	1,359,693	182,454	13%	295,529	(113,075)	-38%
TOTAL CAPITAL PROJECTS FUNDS	20,147,331	20,177,331	2,289,816	11%	5,035,898	(2,746,082)	-55%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,874	301,874	75,073	25%	74,236	837	1%
441 POLICE FACILITY BOND	376,090	376,090	100	0%	-	100	n/a
TOTAL DEBT SERVICE FUNDS	677,964	677,964	75,174	11%	74,236	937	1%

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Three Months Ended September 30, 2019
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	11,746,083	11,746,083	1,634,986	14%	1,712,237	(77,251)	-5%
Interest Income/Transfers	43,166	43,166	3,370	8%	1,007	2,362	234%
Other Revenue/Current Charges	328,660	328,660	39,658	12%	107,866	(68,208)	-63%
640 SEWER OPERATION	12,117,909	12,117,909	1,678,014	14%	1,821,111	(143,097)	-8%
641 SEWER EXPANSION							
Interest Income	253,972	253,972	30,138	12%	9,045	21,093	233%
Development Impact Fee	4,801,041	4,801,041	1,979,427	41%	1,619,679	359,748	22%
Transfers/Other	-	-	-	0%	-	-	0%
641 SEWER EXPANSION	5,055,013	5,055,013	2,009,565	40%	1,628,724	380,841	23%
642 SEWER RATE STABILIZATION	52,262	52,262	3,770	7%	1,173	2,598	222%
643 SEWER-CAPITAL PROJECT	2,853,531	2,853,531	719,162	25%	687,054	32,108	5%
TOTAL SEWER FUNDS	20,078,715	20,078,715	4,410,511	22%	4,138,062	272,450	7%
650 WATER OPERATION							
Water Sales	13,400,000	13,400,000	2,414,058	18%	2,516,229	(102,171)	-4%
Meter Install & Service	125,500	125,500	2,014	2%	65,816	(63,802)	-97%
Transfers-In / Interest Income	478,039	478,039	108,010	23%	100,859	7,151	7%
Other Revenue/Current Charges	776,961	776,961	223,758	29%	340,116	(116,358)	-34%
650 WATER OPERATION	14,780,500	14,780,500	2,747,840	19%	3,023,020	(275,180)	-9%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	73,821	73,821	3,723	5%	1,266	2,457	194%
Development Impact Fee	1,452,925	1,452,925	342,345	24%	413,505	(71,160)	-17%
651 WATER EXPANSION	1,526,746	1,526,746	346,069	23%	414,771	(68,702)	-17%
652 Water Rate Stabilization	11,107	11,107	2,530	23%	251	2,279	908%
653 Water Capital Project	3,812,288	3,812,288	953,319	25%	600,333	352,986	59%
TOTAL WATER FUNDS	20,130,641	20,130,641	4,049,758	20%	4,038,375	11,383	0%
TOTAL ENTERPRISE FUNDS	40,209,356	40,209,356	8,460,269	21%	8,176,437	283,832	3%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,783,719	1,783,719	451,201	25%	468,773	(17,572)	-4%
740 BUILDING MAINTENANCE	3,258,548	3,258,548	804,185	25%	821,386	(17,201)	-2%
741 BUILDING REPLACEMENT	831,677	831,677	192,586	23%	184,533	8,053	4%
745 CIP ADMINISTRATION	1,871,909	1,871,909	342,510	18%	325,434	17,077	5%
760 UNEMPLOYMENT INSURANCE	2,898	2,898	202	7%	74	128	172%
770 WORKERS COMPENSATION	800,422	800,422	215,117	27%	187,969	27,148	14%
790 EQUIPMENT REPLACEMENT	1,052,269	1,052,269	316,203	30%	253,941	62,262	25%
791 EMPLOYEE BENEFITS	1,229,852	1,229,852	196,505	16%	338,512	(142,007)	-42%
793 CORPORATION YARD COMMISSION	-	-	-	0%	1,100	(1,100)	-100%
795 GENERAL LIABILITY INSURANCE	1,076,586	1,076,586	264,760	25%	251,222	13,538	5%
TOTAL INTERNAL SERVICE FUNDS	11,907,880	11,907,880	2,783,270	23%	2,832,945	(49,675)	-2%
TOTAL FOR ALL FUNDS	\$ 133,415,168	\$ 133,470,168	\$ 20,775,094	16%	\$ 24,038,163	\$ (3,263,069)	-14%

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Three Months Ended September 30, 2019
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
CITY COUNCIL		\$ 25,420	\$ 336,684	\$ 102,852	\$ 64,000	\$ 166,852	50%	\$ 7:
CITY ATTORNEY		49,341	763,698	149,350	68,130	217,480	28%	14:
CITY MANAGER		34,339	580,167	107,202	-	107,202	18%	16:
HUMAN RESOURCES		49,776	751,908	176,885	-	176,885	24%	16:
COUNCIL SVCS & RECORDS MGMT								
Council Svcs & Records Mgmt		36,694	601,560	136,978	6,131	143,108	24%	14:
Elections		1,589	178,037	4,949	-	4,949	3%	4:
COUNCIL SVCS & RECORDS MGMT		38,283	779,597	141,927	6,131	148,058	19%	15:
FINANCE		121,204	1,623,059	403,958	29,649	433,607	27%	41:
TOTAL ADMINISTRATION		318,363	4,835,112	1,082,175	167,909	1,250,084	26%	1,11:
II. COMMUNITY SERVICES								
Membership Services & Rec. Programs		345,273	6,371,297	1,643,777	1,408,322	3,052,099	48%	1,60:
Recreation Facility Rentals		109,548	1,356,318	332,037	28,653	360,689	27%	32:
Community Services		41,072	648,407	147,113	70,321	217,434	34%	13:
Environmental Services		16,361	293,918	52,208	-	52,208	18%	5:
Street Maintenance		162,826	2,386,836	404,647	240,488	645,135	27%	45:
Downtown Maintenance		22,448	321,475	66,967	65,316	132,283	41%	6:
Cable Television		1,692	22,594	5,274	-	5,274	23%	1:
COMMUNITY SERVICES		699,220	11,400,845	2,652,022	1,813,100	4,465,122	39%	2,64:
CODE COMPLIANCE		12,055	160,943	36,122	-	36,122	22%	3:
CONGESTION MANAGEMENT		20,065	318,537	63,076	-	63,076	20%	4:
ECONOMIC DEVELOPMENT PROGRAMS		38,640	799,102	157,394	38,599	195,994		17:
TOTAL COMMUNITY SERVICES		769,980	12,679,427	2,908,614	1,851,699	4,760,314	38%	2,85:
III. PUBLIC SAFETY								
POLICE								
PD Administration		80,254	1,300,288	308,271	12,763	321,033	25%	29:
Field Operations		658,455	9,094,915	2,126,583	150,826	2,277,409	25%	1,73:
Support Services		168,183	2,318,572	567,311	7,500	574,811	25%	54:
Emergency Services/Haz Mat		13,175	195,641	41,930	-	41,930	21%	4:
Special Operations		187,480	2,747,543	585,216	-	585,216	21%	48:
Dispatch Services		130,497	1,716,002	417,816	-	417,816	24%	39:
POLICE		1,238,044	17,372,961	4,047,126	171,089	4,218,214	24%	3,49:
FIRE		512,886	6,961,396	1,905,801	64,347	1,970,148	28%	1,78:
TOTAL PUBLIC SAFETY		1,750,930	24,334,358	5,952,927	235,436	6,188,363	25%	5,27:
IV. TRANSFERS								
Other		156,333	2,142,463	468,999	-	468,999	22%	45:
TOTAL TRANSFERS		156,333	2,142,463	468,999	-	468,999	22%	45:
TOTAL GENERAL FUND		2,995,605	43,991,359	10,412,715	2,255,044	12,667,759	29%	9,70:

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Three Months Ended September 30, 2019
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	342	743,072	1,026	-	1,026	0%	1
205	PUBLIC SAFETY/SUPP.LAW	572	106,863	1,716	-	1,716	2%	1
206	COMMUNITY DEVELOPMENT FUND							
	Planning	137,970	2,516,024	440,447	74,932	515,378	20%	51
	Building	213,031	1,998,366	515,220	265,760	780,981	39%	38
	Engineering	108,797	1,332,942	291,981	323,920	615,901	46%	31
206	COMMUNITY DEVELOPMENT FUND	459,798	5,847,332	1,247,648	664,612	1,912,260	33%	1,21
207	LONG RANGE PLANNING	27,621	736,054	87,026	174,074	261,100	35%	12
215/216	CDBG	434	5,209	1,302	-	1,302	25%	1
225	ASSET SEIZURE	-	-	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	16,711	206,031	36,663	46,629	83,291	40%	3
230	COMMUNITY FACILITIES DISTRICT	2,297	46,979	9,083	-	9,083	19%	1
232	ENVIRONMENT PROGRAMS	28,883	439,095	100,987	33,087	134,075	31%	8
234	MOBILE HOME PARK	35	425	105	-	105	25%	-
236	HOUSING MITIGATION	478,980	785,207	700,328	91,140	791,468	101%	1,40
240	EMPLOYEE ASSISTANCE	4,081	28,477	10,772	-	10,772	38%	1
247	ENVIRONMENTAL REMEDIATION	110	-	329	-	329	0%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	4,165,164	6,973,161	4,170,587	-	4,170,587	60%	5,86
255	HOUSING SUCCESSOR AGENCY	72,783	935,845	263,909	414,231	678,141	72%	65
TOTAL SPECIAL REVENUE FUNDS		5,257,811	16,853,750	6,631,481	1,423,773	8,055,255	48%	9,41
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	56,776	5,240,802	217,889	869,938	1,087,828	21%	7
302	PARK MAINTENANCE	84,978	1,227,852	234,989	160,684	395,673	32%	23
303	LOCAL DRAINAGE	(426)	2,513,533	17,322	7,912	25,234	1%	3
304	LOCAL DRAIN. NON-AB1600	5,841	153,783	6,297	9,950	16,247	11%	-
306	AGRICULTURE & OPEN SPACE PRESERVATI	4,547	1,640,771	13,245	51,356	64,601	4%	1,82
308	STREET CIP	79,041	5,414,791	182,124	4,432,530	4,614,654	85%	4
309	TRAFFIC IMPACT	72,164	1,267,514	244,424	152,244	396,668	31%	94
311	POLICE IMPACT	2,739	226,130	7,456	-	7,456	3%	1
313	FIRE IMPACT	594	53,425	26,134	9,462	35,596	67%	1
346	PUBLIC FAC.NON AB1600	1,214	588,826	53,876	38,706	92,582	16%	2
347	PUBLIC FACILITIES IMPACT	13,690	119,458	38,225	60,971	99,195	83%	1
348	LIBRARY IMPACT	18,943	655,384	78,327	36,143	114,470	17%	13
350	UNDERGROUNDING	90	1,075	270	-	270	25%	-
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	114,228	663,118	160,551	33,435	193,986	29%	1
360	COMM/REC CENTER IMPACT	567	458,875	23,911	118,396	142,308	0%	2
TOTAL CAPITAL PROJECTS FUNDS		454,985	20,225,338	1,305,039	5,981,727	7,286,766	36%	3,36
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	839	311,636	2,517	-	2,517	1%	1
441	POLICE FACILITY BOND DEBT	320	380,552	960	-	960	0%	-
TOTAL DEBT SERVICE FUNDS		1,159	692,188	3,477	-	3,477	1%	1

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City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Three Months Ended September 30, 2019
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,526,745	12,087,541	2,514,660	607,699	3,122,359	26%	2,441
641	SEWER CAPITAL EXPANSION	74,498	12,040,565	159,045	344,457	503,501	4%	111
642	SEWER RATE STABILIZATION	90	1,078	270	-	270	25%	
643	SEWER-CAPITAL PROJECTS	1,800,004	4,480,646	1,842,286	3,323,036	5,165,322	115%	2,161
TOTAL SEWER FUND(S)		3,401,337	28,609,829	4,516,260	4,275,192	8,791,452	31%	4,721
WATER								
	Water Operations	1,019,216	14,118,964	2,941,880	1,740,472	4,682,352	33%	2,451
	Utility Billing	64,651	789,099	212,507	27,131	239,638	30%	191
	Water Conservation	4,758	198,464	15,182	97,549	112,731	57%	21
650	WATER OPERATIONS	1,088,625	15,106,526	3,169,569	1,865,152	5,034,721	33%	2,661
651	WATER CAPITAL EXPANSION	121,706	1,538,305	392,334	372,323	764,657	50%	321
652	WATER RATE STABILIZATION	29	352	87	-	87	25%	
653	WATER-CAPITAL PROJECTS	8,712	3,210,663	26,352	66,500	92,851	3%	91
TOTAL WATER FUND(S)		1,219,072	19,855,846	3,588,341	2,303,975	5,892,316	30%	3,081
TOTAL ENTERPRISE FUNDS		4,620,409	48,465,676	8,104,601	6,579,167	14,683,768	30%	7,801
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	139,847	2,025,467	440,025	108,558	548,582	27%	371
740	BUILDING MAINTENANCE	230,497	3,233,319	729,278	334,414	1,063,693	33%	671
741	BUILDING REPLACEMENT	16,995	278,950	35,967	124,112	160,079	57%	81
745	CIP ADMINISTRATION	124,079	1,619,521	376,877	10,192	387,069	24%	321
760	UNEMPLOYMENT	-	10,000	2,135	-	2,135	21%	
770	WORKERS COMPENSATION	80,645	952,045	673,707	-	673,707	71%	391
790	EQUIPMENT REPLACEMENT	-	1,136,915	-	374,915	374,915	33%	
791	EMPLOYEE BENEFITS FUND	12,130	615,000	116,573	-	116,573	19%	201
793	CORP YARD COMMISSION	-	-	-	-	-	0%	
795	GEN. LIABILITY INSURANCE	9,201	1,044,568	795,495	-	795,495	76%	731
TOTAL INTERNAL SERVICE FUNDS		613,394	10,915,784	3,170,058	952,190	4,122,248	38%	2,791
REPORT TOTAL		\$ 13,943,363	\$ 141,144,095	\$ 29,627,372	\$ 17,191,902	\$ 46,819,274	33%	\$ 33,081

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)

 City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Three Months Ended September 30, 2019 25% of Year Complete									
Fund No.	Fund	Preliminary Fund Balance 06-30-19	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 18,724,089	\$ 5,235,105	12%	\$ 10,412,715	24%	\$ (5,177,610)	\$ 2,255,044	\$ 11,291,435
	TOTAL GENERAL FUND	\$ 18,724,089	\$ 5,235,105	12%	\$ 10,412,715	24%	\$ (5,177,610)	\$ 2,255,044	\$ 11,291,435
202	STREET MAINTENANCE	37,376	\$ 102,645	14%	\$ 1,026	26%	\$ 101,619	\$ -	\$ 138,995
205	PUBLIC SAFETY/SUPPL. LAW	93,997	134	0%	1,716	22%	(1,582)	-	92,415
206	COMMUNITY DEVELOPMENT	1,329,077	1,088,400	21%	1,247,648	21%	(159,248)	664,612	505,217
207	LONG RANGE PLANNING	1,248,188	169,062	23%	87,026	12%	82,036	174,074	1,156,150
215 / 216	CDBG	62,328	91	2%	1,302	25%	(1,211)	-	61,117
225	ASSET SEIZURE	129,741	187	8%	-	n/a	187	-	129,928
229	LIGHTING AND LANDSCAPE	82,282	200	0%	36,663	18%	(36,462)	46,629	(809)
230	COMMUNITY FACILITIES DISTRICT	92,596	152	0%	9,083	19%	(8,930)	-	83,666
232	ENVIRONMENTAL PROGRAMS	332,708	114,775	28%	100,987	23%	13,788	33,087	313,408
234	MOBILE HOME PK RENT STAB.	52,295	75	9%	105	25%	(30)	-	52,265
235	SENIOR HOUSING	227,806	328	7%	-	n/a	328	-	228,134
236	HOUSING MITIGATION	2,572,871	191,643	8%	700,328	89%	(508,684)	91,140	1,973,046
240	EMPLOYEE ASSISTANCE	52,272	4,616	16%	10,772	38%	(6,156)	-	46,116
247	ENVIRONMENT REMEDIATION	132,766	192	7%	329	n/a	(137)	-	132,629
250	COMH-SUCCESSOR AGENCY-MHRDA	(178,647)	133,065	2%	4,170,587	60%	(4,037,522)	7,421,052	(11,637,221)
255	HOUSING SUCCESSOR AGENCY	960,570	125,892	23%	263,909	28%	(138,017)	414,231	408,321
260	PUBLIC ART	185	-	n/a	-	-	-	-	185
	TOTAL SPECIAL REVENUE FUNDS	\$ 7,228,411	\$ 1,931,460	11%	\$ 6,631,481	39%	\$ (4,700,022)	\$ 8,844,825	\$ (6,316,436)
301	PARK DEV. IMPACT FUND	4,116,066	\$ 298,094	11%	\$ 217,889	4%	\$ 80,204	\$ 869,938	\$ 3,326,332
302	PARK MAINTENANCE	4,078,868	93,227	7%	234,989	19%	(141,762)	160,684	3,776,422
303	LOCAL DRAINAGE	9,826,411	18,159	1%	17,322	1%	837	7,912	9,819,336
304	LOCAL DRAINAGE/NON-AB1600	1,556,343	2,245	3%	6,297	4%	(4,052)	9,950	1,542,341
306	AGRICULTURE AND OPEN SPACE PRESERV	7,929,839	425,317	12%	13,245	1%	412,072	51,356	8,290,555
308	STREET CIP	3,223,422	388,579	8%	182,124	3%	206,455	4,432,530	(1,002,653)
309	TRAFFIC IMPACT FUND	991,301	594,273	46%	244,424	19%	349,849	152,244	1,188,906
311	POLICE IMPACT FUND	(640,897)	70,873	24%	7,456	3%	63,417	-	(577,480)
313	FIRE IMPACT FUND	3,873,198	37,254	8%	26,134	49%	11,121	9,462	3,874,856
346	PUBLIC FACILITIES NON-AB1600	(159,653)	-	n/a	53,876	9%	(53,876)	38,706	(252,235)
347	PUBLIC FACILITIES IMPACT FUND	694,036	70,086	32%	38,225	32%	31,861	60,971	664,926
348	LIBRARY IMPACT FUND	2,987,436	100,941	11%	78,327	12%	22,614	36,143	2,973,907
350	UNDERGROUNDING	859,066	1,238	2%	270	25%	968	-	860,034
355	SCHOOL PEDESTRIAN/TRAFFIC SFY	1,477,523	7,078	1%	160,551	24%	(153,473)	33,435	1,290,615
360	COMM/REC CTR IMPACT FUND	2,122,228	182,454	13%	23,911	5%	158,543	118,396	2,162,374
	TOTAL CAPITAL PROJECT FUNDS	\$ 42,935,187	\$ 2,289,816	11%	\$ 1,305,039	6%	\$ 984,778	\$ 5,981,727	\$ 37,938,237
420	CIVIC CENTER DEBT	170,884	\$ 75,073	25%	\$ 2,517	1%	\$ 72,556	\$ 81	\$ 243,359
441	POLICE FACILITY BOND DEBT	70,281	100	0%	960	0%	(860)	103	69,318
	TOTAL DEBT SERVICE FUNDS	\$ 241,165	\$ 75,174	11%	\$ 3,477	1%	\$ 71,697	\$ 185	\$ 312,677

Fund No.	Fund	City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Three Months Ended September 30, 2019 25% of Year Complete							
		Preliminary Fund Balance 06-30-19	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,823,174	\$ 1,678,014	14%	\$ 2,514,660	21%	\$ (836,646)	607,699	1,378,829
641	SEWER IMPACT FUND*	18,041,000	2,009,565	40%	159,045	1%	1,850,520	344,457	19,547,063
642	SEWER RATE STABILIZATION	2,616,622	3,770	7%	270	25%	3,500	-	2,620,122
643	SEWER-CAPITAL PROJECTS	8,665,393	719,162	25%	1,842,286	41%	(1,123,123)	3,323,036	4,219,234
650	WATER OPERATIONS	4,446,414	2,747,840	19%	3,169,569	21%	(421,729)	1,865,152	2,159,533
651	WATER IMPACT FUND*	2,133,422	346,069	23%	392,334	26%	(46,265)	372,323	1,714,834
652	WATER RATE STABILIZATION	1,724,231	2,530	23%	87	25%	2,443	-	1,726,674
653	WATER -CAPITAL PROJECT	1,158,362	953,319	25%	26,352	1%	926,968	66,500	2,018,830
TOTAL ENTERPRISE FUNDS		\$ 41,608,618	\$ 8,460,269	21%	\$ 8,104,601	17%	\$ 355,668	\$ 6,579,167	\$ 35,385,119

730	INFORMATION SERVICES	\$ 955,305	\$ 451,201	25%	\$ 440,025	22%	\$ 11,176	108,558	\$ 857,924
740	BUILDING MAINTENANCE	111,327	804,185	25%	729,278	23%	74,907	334,414	(148,180)
741	BUILDING REPLACEMENT	2,512,264	192,586	23%	35,967	13%	156,618	124,112	2,544,770
745	CIP ENGINEERING	28,366	342,510	18%	376,877	23%	(34,367)	10,192	(16,193)
760	UNEMPLOYMENT	142,357	202	7%	2,135	21%	(1,933)	-	140,424
770	WORKERS COMPENSATION	2,013,976	215,117	27%	673,707	71%	(458,590)	30,000	1,525,386
790	EQUIPMENT REPLACEMENT	4,825,134	316,203	30%	-	n/a	316,203	374,915	4,766,422
791	EMPLOYEE BENEFITS FUNDS	(189,229)	196,505	16%	116,573	19%	79,932	-	(109,297)
793	CORP YARD COMMISSION	-	-	n/a	-	n/a	-	-	-
795	GEN. LIABILITY INSURANCE	1,395,245	264,760	25%	795,495	76%	(530,735)	-	864,510
TOTAL INTERNAL SERVICE FUNDS		\$ 11,794,745	\$ 2,783,270	23%	\$ 3,170,058	29%	\$ (386,788)	\$ 982,190	\$ 10,425,767

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,923,251	\$ 5,235,105	12%	\$ 10,412,715	24%	\$ (5,177,610)	\$ 2,255,044	\$ 11,291,435
SPECIAL REVENUE GROUP	22,843,805	1,931,460	11%	6,631,481	39%	(4,700,022)	8,844,825	(6,316,436)
DEBT SERVICE GROUP	241,165	75,174	11%	3,477	1%	71,697	185	312,677
CAPITAL PROJECTS GROUP	43,698,791	2,289,816	11%	1,305,039	6%	984,778	5,981,727	37,938,237
ENTERPRISE GROUP	42,719,956	8,460,269	21%	8,104,601	17%	355,668	6,579,167	35,385,119
INTERNAL SERVICE GROUP	15,152,608	2,783,270	23%	3,170,058	29%	(386,788)	982,190	10,425,767
TOTAL ALL GROUPS	\$ 122,532,217	\$ 20,775,094	16%	\$ 29,627,372	21%	\$ (8,852,277)	\$ 24,643,139	\$ 89,036,799

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 8/22/19 to 11/4/19

Vendor Name	Description of Service	Begin Date	End Date	Department	Amount
Critical Incident Videos, LLC	Technical Expertise for putting together a critical incident video	8/23/2019	6/30/2020	PD	\$45,000
Flexground Surfaces, Inc	CRC Pool Deck Resurfacing Project	9/13/2019	10/18/2019	CSD	\$56,223
Advanced Auto Body, Inc	Auto body repair including paint for Police Department vehicles	9/20/2019	6/30/2021	PD	\$40,000
Godbe Corporation	Revenue Measure Voter Polling	10/14/2019	3/31/2020	PD	\$30,550
Strategic Economics	Update of Strategic Economics 2013 Industrial Lands Analysis	10/8/2019	2/28/1950	DS	\$45,000
Burke, Williams & Sorensen, LLP	General Municipal Law Advice	10/29/2019	6/30/2020	CAO	\$45,000

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)

1st Quarter FY2019-20 Financial Report





General Fund

- Both Revenues and Expenditures are tracking within budget
- Key GF revenues:

Category	Budget	YTD Actual	Prior YTD
Property Tax	\$13,082,377	\$ 24,485	\$ 103,321
Sales Tax	10,476,000	1,105,756	991,931
Svc Charges	10,267,724	2,790,139	2,688,112
Hotel Tax	3,080,880	583,038	510,945

- Expenditures including encumbrances:

Total Exp	\$43,991,359	\$12,667,759	\$12,771,498
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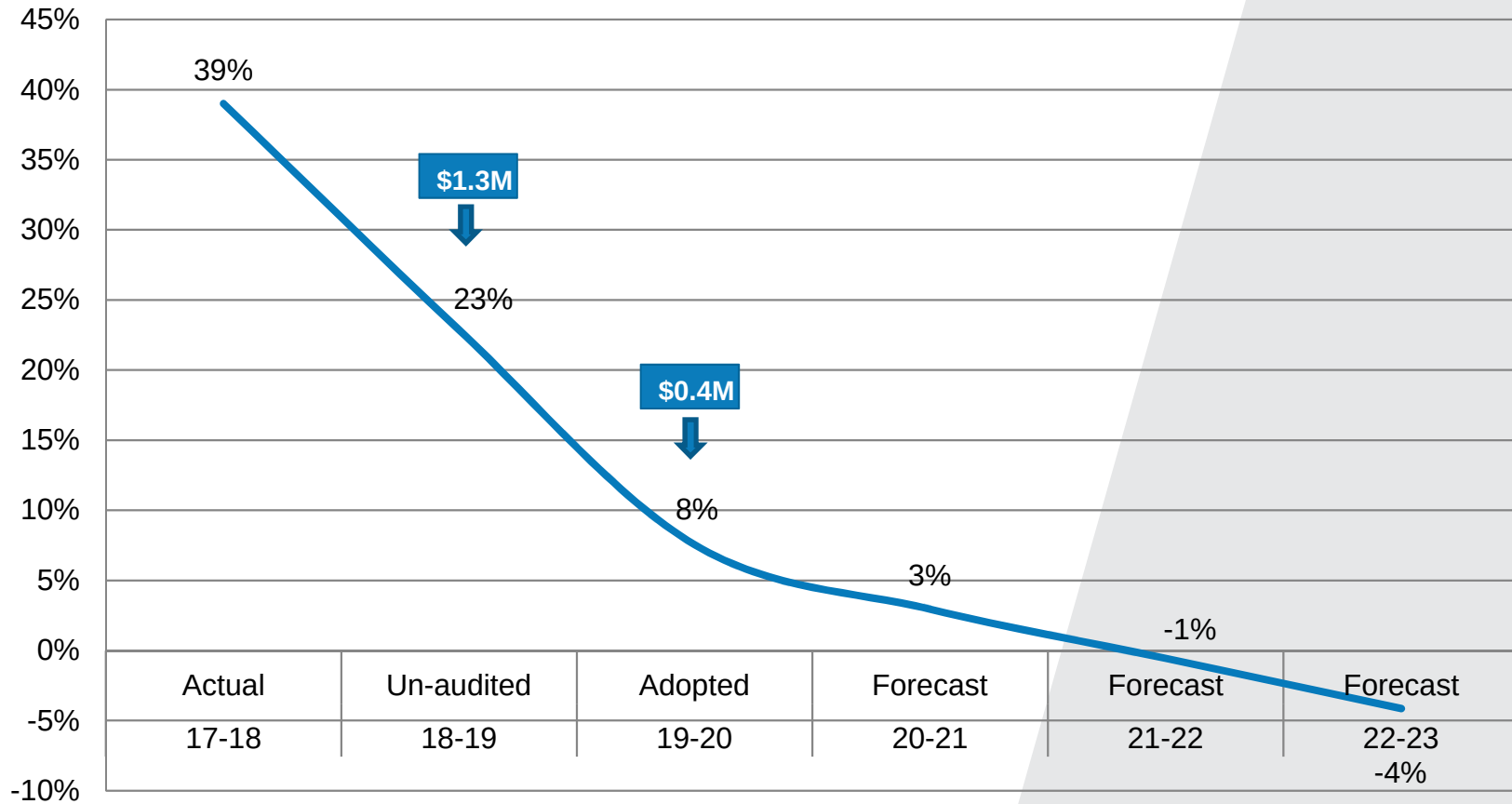


Development Services Fund

- Both revenues and expenditures are tracking below budget

Category	Budget	YTD Actual	Prior YTD
Revenues	\$5,263,435	\$1,088,400	\$1,366,793
Expenditures	5,847,332	1,912,260	2,007,462
Net	(\$583,897)	(\$823,860)	(\$640,669)

Development Services Fund (cont'd)





Enterprise Funds

- Wastewater Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$12,117,909	\$1,678,014	\$1,821,111
Expenditures	12,087,541	3,122,359	2,640,645
Net	\$30,368	(\$1,444,345)	(\$819,534)

- Per City Council reserve policy – excess funds will be transferred to Wastewater capital projects fund



Enterprise Funds (cont'd)

- Water operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$14,780,500	\$2,747,840	\$3,023,020
Expenditures	15,106,526	5,034,721	3,778,338
Net	(\$326,026)	(\$2,286,881)	(\$755,318)

- Per City Council reserve policy – excess funds will be transferred to Water capital projects fund



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

INTRODUCE ORDINANCE AMENDING CHAPTER 17.28 OF THE MORGAN HILL MUNICIPAL CODE REGARDING PARKLAND DEDICATION AND/OR IN LIEU FEES FOR NEW SUBDIVISIONS

RECOMMENDATION(S)

1. Waive the first and second reading of the Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update the City's Park Dedication Ordinance; and
2. Introduce Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update park dedication requirements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

On October 2, 2019, the City Council introduced Ordinance No. 2305, updating the Municipal Code to bring the City's requirements for park dedication or fees in lieu up to date and to allow for the use of Quimby Act fees going forward as of January 1, 2020. At that time, one developer requested the ordinance receive some specific changes to allow for smaller sized private park space to be credited towards parkland dedication. The City Council directed staff to work with the developer on an update that would allow for this. This ordinance provides for this update (Attachment 1).

Only development that requires subdivision is subject to the dedication or fee requirements per the park dedication ordinance. The City is continuing to collect park impact fees for development where subdivision is not required as applicable (park impact fees would therefore primarily be collected on multi-family residential projects where subdivision does not occur). Attachment 2 provides greater detail on the updated requirements.

The update to the ordinance will support the development of private park space. The

park dedication ordinance will allow for private park space credit, while specific park amenities will be required within new development through the Residential Design and Development Standards that are being presented to the Council in a separate item on December 18.

COMMUNITY ENGAGEMENT: Inform

On September 19, 2019, City staff held a public meeting to discuss the original update to the Municipal Code with developers. Two members of the development community attended along with one member of the general public. Notice of the proposed ordinance and public meeting were sent to the development community.

For the current update, staff discussed the proposed changes with the developer that requested them and provided an advanced review of the changes prior to returning with the item to the Council.

ALTERNATIVE ACTIONS:

The City Council may choose to not move forward with the proposed ordinance and provide City staff with alternate direction. The park dedication ordinance has been approved previously; not approving the current update would not allow smaller developments to receive credit for private park space.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 2, 2019, the City Council introduced Ordinance No. 2305, updating the Municipal Code regarding park dedication requirements. On October 23, the City Council adopted the ordinance.

FISCAL AND RESOURCE IMPACT:

Approving the changes to the ordinance may reduce the amount of Quimby Act fees collected on some subdivisions but will increase the amount of private park space developed within neighborhoods.

CEQA (California Environmental Quality Act):

Not a Project.

This ordinance is not a project and does not require environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title, Section 15378(b)(4) (The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.)

LINKS/ATTACHMENTS:

1. Quimby Update 2 Redline
2. Park Dedication Ordinance Information Sheet

ORDINANCE NO. XXXX, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 17.28 (“LAND DEDICATIONS AND
RESERVATIONS”) IN TITLE 17 (“SUBDIVISIONS”) OF
THE MORGAN HILL MUNICIPAL CODE TO UPDATE
PARK DEDICATION REQUIREMENTS**

**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 17.28 of the City of Morgan Hill Municipal Code to update park land dedication requirements.

Section 2. Section 17.28.130 (“Credit for private recreation or open space—Replacement of existing development”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows:

17.28.130 - Credit for private recreation or open space—Replacement of existing development.

- A. No credit shall be given for private open space in a subdivision except as provided in this section. Where a substantial private park and recreational area is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, partial credit, not to exceed 40 percent, shall be given against the requirement of land dedication or payment of fees in lieu thereof if the City Manager or designee finds that all the following standards are met:
1. That yards, court areas, setbacks and other open areas required to be maintained by the zoning and building ordinances and regulations shall not be included in the computation of such private open space;
 2. That the private ownership and maintenance of the open space is adequately provided for by the reported written agreement, conveyance, or restrictions;
 3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the city or its successor;
 4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, and location;

5. That facilities proposed for the open space are in substantial accordance with the provisions of the recreational element of the general plan; and
6. That the open space for which credit is given is a minimum of ~~two~~ 0.25 contiguous acres, ~~and provides a minimum of four of the local park basic elements listed below, or a combination of such and other recreational improvements that will meet the specific recreational park needs of the future residents of the area:~~

Criteria List	Acres
Children's play apparatus area	.50 <u>.75</u>
Landscape park like and quiet areas	.50 <u>1.00</u>
Family picnic area	.25 <u>.75</u>
Game court area	.25 <u>.50</u>
Turf playfield	1.00 <u>3.00</u>
Swim pool (42' x 75' with adjacent deck and lawn areas)	.25 <u>.50</u>
Recreation center building	.15 <u>.25</u>

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- B. Where the proposed subdivision will replace existing previously occupied dwelling units, credits shall be given against the requirement of land dedication or payment of fees in lieu thereof if the City Manager or designee finds that existing previously occupied dwelling units will be removed. Credit shall be given on a unit-by-unit basis.
- C. Before credit is given the City Manager or designee shall make written findings that the standards set out in subsections A and B of this section are met.
- D. A developer receiving credit for private open space through this Chapter shall not be permitted to utilize the same private open space towards any other park, recreation and open space requirements or credits with the City.
- E. At the time of the filing of the final subdivision map, the subdivider shall dedicate the land and/or pay the fees as determined by the city.
- F. Open space covenants for private park or recreational facilities shall be submitted to the city prior to approval of the final subdivision map and shall be recorded concurrently with the final subdivision map.

Section 3. CEQA Exemption

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are not a project and do not require environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title, Section 15378(b)(4) (The creation of

City of Morgan Hill
Ordinance No. XXXX, New Series
Page 3 of 4

government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.)

Section 4. Severability.

Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 5. Effective Date; Posting.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF DECEMBER 2019 AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF _____ AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

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

APPROVED:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: xxxxxxxxxxxx

∞ **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.

City of Morgan Hill
Ordinance No. XXXX, New Series
Page 4 of 4

XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the xxxxxxxx day of xxxxxxxxxxxxxxxx.

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

DATE: _____

IRMA TORREZ, City Clerk



UNDERSTANDING PARKLAND DEDICATION, CREDITS and FEE IN LIEU REQUIREMENTS

WHAT IS THE PURPOSE OF CHAPTER 17.28?

Chapter 17.28 helps the City acquire and develop adequate public parkland to meet the additional demand generated by new residential subdivision and new non-subdivided residential projects.

WHEN DOES THE CITY REQUIRE PARKLAND DEDICATION OR PAYMENT OF FEES?

As a condition of approval of new condominiums or single-family subdivisions in Morgan Hill, the City requires that the impact on the Morgan Hill parks system be addressed either through dedication of additional parkland, or payment of fees in-lieu of dedication.

WHAT PROJECTS ARE SUBJECT TO THIS REQUIREMENT?

Any residential development that requires a subdivision map under the City's Subdivision Ordinance (Title 17 of the Morgan Hill Municipal Code) shall dedicate developed parkland, pay a fee in-lieu thereof, or provide a combination of public parkland and the fee, at the discretion of the City. For projects of 50 parcels/units or fewer, the City may impose an in-lieu fee only. The requirement only applies to subdivision or parcel map applications submitted after January 1, 2020.

Some types of projects are exempt though other impact fees will apply:

- Residential projects that do not require a subdivision, such as new single-family homes or remodels
- Subdivision of two existing dwelling units, so long as the units remain on the site
- 100% affordable housing projects
- Market rate rental housing projects (park impact fees and other impact fees apply)
- Non-residential projects, including industrial/commercial subdivisions
- Condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building that is 5 years or older

WHEN IS LAND DEDICATION REQUIRED?

Any project resulting in more than 50 parcels or condominium units will be required to dedicate public parkland to the City. The amount of land to be provided shall be determined pursuant to the following standards and formula:

Formula Based on Population Estimate

$$\frac{\text{Average number of persons/unit}}{\frac{1,000 \text{ Population}}{\text{Park Acreage Standard (from Section 17.28.060)}}} = \text{Minimum acreage dedication}$$

Example for single-family dwelling unit (DU):

$$\frac{3.02}{\frac{1,000}{5}} = .0151 \text{ acres/DU}$$

The average number of persons per household by units in a structure shall be established by City Council resolution in accordance with the most recent available Federal Census.

WHEN CAN A FEE BE PAID IN-LIEU OF LAND DEDICATION?

Projects creating 50 or fewer parcels or condominium units are not required to dedicate land, but rather pay a fee in-lieu. The fee is equivalent to the land value of the portion of the local park required to serve the needs of the residents of the proposed subdivision as prescribed in Section 17.28.060 (described in the section above).

Projects of 50 parcels or more can pay a fee in-lieu in certain circumstances as illustrated in Section 17.28.070. There may be cases where a project of 50 parcels or more may be required to dedicate land and pay an in-lieu fee. These requirements are found in Section 17.28.100.

WHEN CAN A PROJECT OBTAIN PARK CREDITS?

No credit shall be given for private open space in a subdivision except as provided in Section 17.28.130. Where a substantial private park and recreational area is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, partial credit, not to exceed 40 percent, shall be given against the requirement of land dedication or payment of fees in-lieu if certain standards are met.

WHERE CAN I FIND MORE DETAILED INFORMATION?

The City's subdivision requirements are in Title 17 of the Morgan Hill Municipal Code. Parkland dedication requirements may be found in Chapter 17.28. They are available online:

https://library.municode.com/ca/morgan_hill/codes/code_of_ordinances?nodeId=TIT17SU_CH17.28LA_DERE



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

PREPARED BY: Chris Ghione, Public Services Director

APPROVED BY: City Manager

SPORTS FACILITY LAND ACQUISITION

RECOMMENDATION(S)

1. Adopt resolution amending the adopted Fiscal Year (FY) 2019-20 budget to appropriate \$1,250,000 from the Park Impact Fund (301) for the purchase of property and associated costs;
2. Authorize the City Manager to execute a purchase agreement with Angelo Grestoni for the purchase of 3.85 acres of property (APN 817-13-008) for \$1,199,000;
3. Authorize the City Manager to execute a certificate of acceptance for the property; and
4. Authorize the City Manager to execute all documents, agreements, and payments necessary to complete the purchase of the property.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

POLICY CONSIDERATIONS:

The City's Bikeways, Trails, Parks and Recreation Master Plan calls for expanded sports facilities within the City that serve local residents, but also support regional events and sports tourism. The City's Economic Blueprint identifies sports tourism as one of its components. The City has looked for opportunities to identify baseball and softball field locations for several years and is also considering sand volleyball facilities. Understanding these priorities and policies, should the City Council consider the purchase of additional property adjacent to the Outdoor Sports Center and Aquatics Center?

REPORT NARRATIVE:

The City currently owns the Outdoor Sports Center (OSC) and Aquatics Center (AC) located on Condit Road, between Tennant and Dunne Avenues. Both facilities are utilized for local and regional sports and recreation events. Large events at both sites support both local economic development and cost recovery at the facilities. In June

2016, the City Council authorized the purchase of 10 acres of property on the southwest corner of Murphy Avenue and Barrett Avenue (Recreation Property). The property is adjacent to the Morgan Hill Aquatics Center and the Morgan Hill Outdoor Sports Center (OSC) and was purchased for additional parking and potential recreation facilities.

In July 2015, after numerous years of effort, the City Council authorized the purchase of 25.8 acres for a future baseball/softball field facility (Ball Field Property). The property is located south of the intersection of Condit Road and Tennant Avenue, adjacent to Highway 101. The Ball Field Property and the Recreation Property is within the County but within the City's Urban Growth Boundary (UGB). The purchase was made to "land bank" the property until a time when the City would have funding to develop the property. At the time of purchase for both properties, it was believed that future annexation would bring the properties within the City limits, but it was also understood that if the properties were not annexed that they could be developed by the City, in the County.

On February 6, 2019, the City Council reviewed and discussed policy implications for Recreation and Ball Field sites. Multiple regional partner organizations expressed concern via letters regarding the City's future development within the County. At the meeting the City Council provided direction to continue to work with regional partners on the development of the Recreation Property. The City Council expressed a preference to land bank the Ball Filed Property and look at alternate development options, while continuing to lease the Ball Field Property for agricultural purposes.

In early November 2019, the City was approached by a realtor representing multiple properties within the area and near the AC, OSC, and Recreation Property. The City worked to conduct an appraisal of these properties, including the property located directly south of the Aquatics Center on Condit Road (See Attachment 1 for Project Location). The seller has offered to sell the property for \$1,199,000, which is 10% above the appraisal price of \$1,090,000. City staff believe this property provides an excellent opportunity to provide future sports recreational opportunities and their associated amenities. The property is outside the City limits within the County, but has a state agriculture designation as grazing land, is not prime farmland, and has not been farmed in decades. The City has brought the property forward quickly due to the seller's requirement to sell prior to December 31, 2019.

The City has begun the process of conducting due diligence for the purchase of the property, including an environmental analysis which will be conducted before closing on the property, should the City Council direct staff to move forward.

COMMUNITY ENGAGEMENT: Not Applicable

City staff has conducted significant community engagement for its long-term planning documents such as the Bikeways, Trails, Parks and Recreation Master Plan, which prioritize sports facilities and sports tourism. Staff further believes the purchase is in alignment with previous Council direction. However, no specific community engagement has been conducted for this specific land purchase as negotiations with private property owners are not conducive to engagement with the public.

ALTERNATIVE ACTIONS:

The City Council could elect not to move forward with the purchase of the property.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In February of this year, the City Council provided direction on future sports facilities.

FISCAL AND RESOURCE IMPACT:

There are adequate funds in the Park Impact Fund (301) to appropriate for the purchase of this property. A resolution amending the FY 2019-20 budget to appropriate \$1,250,000 is included as Attachment 2. The purchase price of the property will be \$1,199,000, and the remainder \$51,000 would be required to pay for the related closing costs. This expenditure of Park Impact Funds could affect the timing of future park projects, but with the exception of the Magical Bridge Playground the timing of other projects is not yet determined, and therefore staff is recommending this opportunity be taken advantage of to acquire this property while the opportunity exists.

CEQA (California Environmental Quality Act):

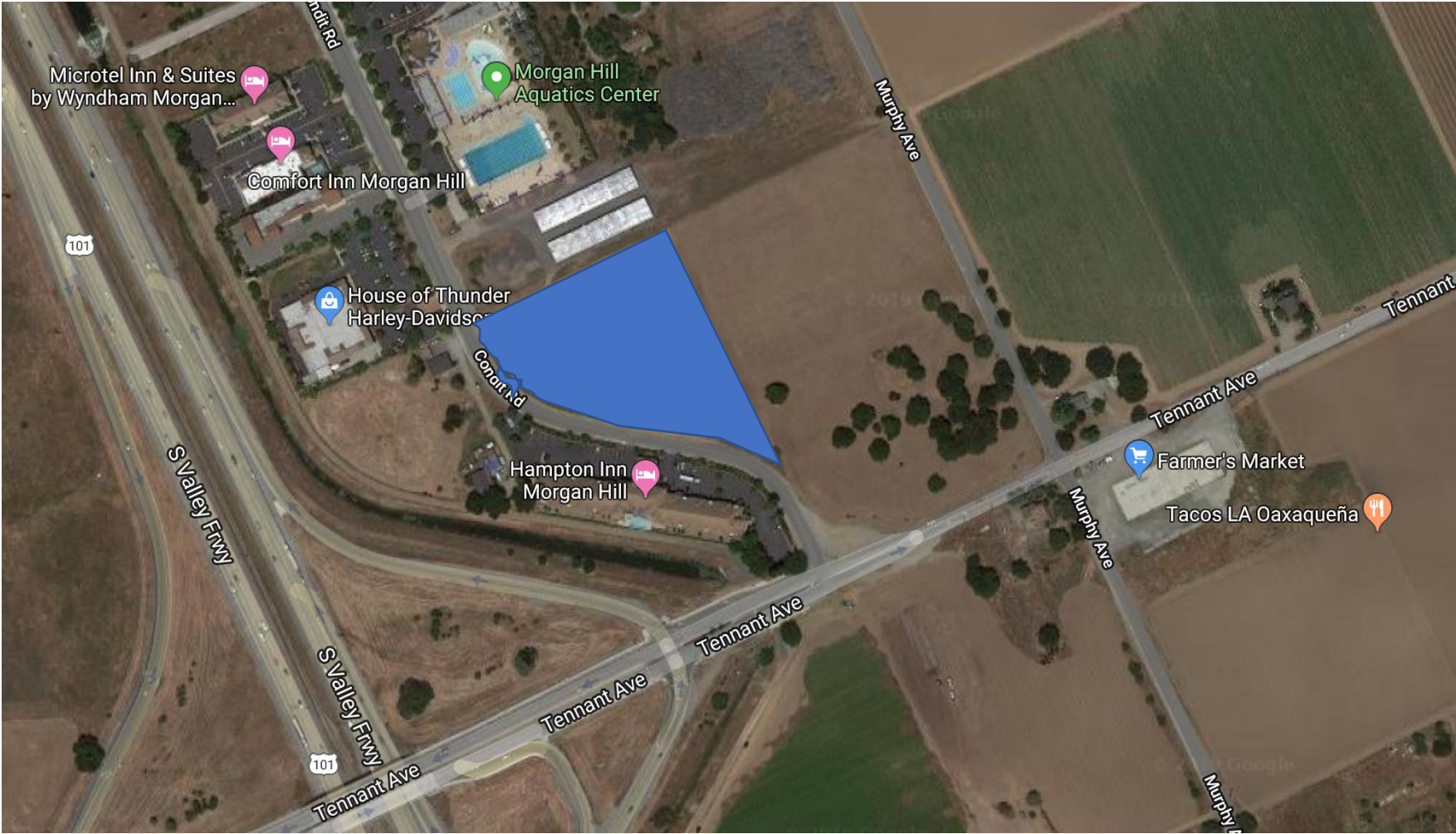
Not a Project

Purchase of the property is not a project. Future CEQA analysis will be required for use of the property and for its development as a recreation facility. Recreation use of the proposed property as consistent with the Morgan Hill 2035 General Plan Land Designation.

LINKS/ATTACHMENTS:

1. Location Map
2. Budget Resolution
3. Purchase Agreement Condit Dunne Property

Location Map



Attachment: Location Map (2602 : Sports Facility Land Acquisition)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 ADOPTED BUDGET TO APPROPRIATE \$1,250,000 IN THE PARK IMPACT FEE FUND (301) FOR THE SPORTS FACILITY LAND AQUISITION.

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

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 18th day of December 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. _____, adopted by the City Council at the meeting held on December 18, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Exhibit A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

014

FUND:

301 Park Impact Fund

DEPARTMENT:

8051 Park Development

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

12/18/19

AGENDA ITEM TITLE:

Sports Facility Land Acquisition

	07/01/19			06/30/20 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	4,116,066	2,647,562	5,180,802	1,582,826
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	30,000	60,000	(30,000)
RECOMMENDED ACTION		-	1,250,000	(1,250,000)
RESULT OF RECOMMENDED ACTION	<u>4,116,066</u>	<u>2,677,562</u>	<u>6,490,802</u>	<u>302,826</u>

PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT ("Agreement") is entered into as of _____ ("Effective Date"), by and between Angelo Grestoni, a married man, as sole and separate property owner ("Seller"), and the CITY OF MORGAN HILL, a municipal corporation, ("Buyer").

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. PROPERTY

Subject to the terms and conditions in this Agreement, Seller agrees to sell and Buyer agrees to buy the certain real property ("Real Property") located generally at Condit Road and Tennant Avenue in the unincorporated County of Santa Clara, specifically APN 817-13-008 described in attached **Exhibit A**, and all structures and improvements located on the Real Property, together with all rights, privileges, easements, and appurtenances; all personal property, equipment, supplies, and fixtures owned by Seller and located at the Real Property; the names under which the Real Property is operated; and Seller's interest as lessor in any leases of the Real Property (collectively, the "Property").

2. ACCEPTANCE

Seller's execution of this Agreement shall constitute the offer and the full execution of this Agreement by both Seller and Buyer shall constitute the Acceptance. The date of Acceptance shall be the date the Buyer receives a mutually executed copy of this Agreement.

3. PURCHASE PRICE

- A. **Purchase Price.** The purchase price ("Purchase Price") for the Property shall be One Million, One Hundred, Ninety Nine Thousand Dollars (\$1,199,000) and shall be payable all in cash upon Close of Escrow.

4. DUE DILIGENCE

- A. **Property Information.** Within five (5) days after Execution Date, Seller shall provide to Buyer all property information described in all sub-paragraphs listed below that is in Seller's possession or reasonable control (collectively, the "Property Information"). Upon the completion of the delivery of all Property Information, the Seller shall certify to the Buyer that "all Property Information as defined in paragraph 4 of the Purchase Agreement has been delivered to the Buyer" and such certification shall be dated the date of the delivery of the written certificate ("Delivery Date").
- i. Copies of all reports including, but not limited to, environmental, soil, structural engineering and drainage reports, assessments, audits or surveys (including any ALTA or other form of land survey) related to the Property.
 - ii. Copies of any and all "as-built" construction, architectural, mechanical, electrical, plumbing, landscaping, grading plans or specifications relating to the Property and any major capital repairs or tenant improvements.
 - iii. Copies of any and all warranties or guarantees, permits, certificates of occupancy, licenses and other approvals related to the Property.

PURCHASE AGREEMENT

- iv. Copies of any and all management, maintenance, service, supply, equipment rental and other contracts effecting the Property or used or useful in the operation and/or maintenance thereof.
 - v. Copies of any and all leases, subleases or licenses of all or any portion of the Real Property, including amendments and exhibits, together with copies of any communications with tenants and documentation of security deposits, if any, held by Seller (the "Leases") and a rent roll.
 - vi. Copies of all easements affecting all or any portion of the Real Property.
 - vii. Listing of any tenancies, occupancy or rights let or assigned to any third party not evidenced by documents described in v. and vi. above.
 - viii. An inventory of all personal property to be sold under this Agreement, if any, and a complete schedule of all service contracts related to the Property that Seller does not intend to cancel before the Close of Escrow.
 - ix. Full written disclosure of all facts which materially affect the value or desirability of the Property.
- B. Ongoing Duty to Disclose.** Seller shall have a continuing obligation to promptly provide Buyer with any additional Property Information that comes into Seller's possession or reasonable control as well as any inaccuracies discovered in the Property Information.
- C. Due Diligence Period.** The term "Due Diligence Period" shall mean the period commencing on the Delivery Date and ending five (5) days after the Delivery Date during which Buyer may investigate the condition of the Property. Due Diligence shall no way extend the Close of Escrow date specified in paragraph 9c. If additional time is needed, extension of time shall occur upon mutual agreement only, and shall be extended by up to 45 days.
- D. Inspections, Tests and Studies.** Subject to the terms of this Agreement, during the Due Diligence Period, Buyer shall have the right to conduct such economic, title, survey, environmental, physical and structural examinations, inspections, tests, studies and investigations of the Property as Buyer deems necessary. Seller shall permit Buyer and its authorized agents and representatives to enter upon the Property at all reasonable times during normal business hours to inspect and conduct reasonably necessary tests and studies of the Property. Such entry, inspections, studies and tests may be conducted only during the Due Diligence Period. Buyer shall notify Seller by telephone or fax, of its intention or the intention of its authorized agents or representatives to enter upon the Property at least twenty-four (24) hours prior to such intended entry. At Seller's option, Seller may be present for any inspections, tests or studies. Buyer shall bear the cost of all such inspections, tests and studies. In conducting any inspections, tests or studies, Buyer and its authorized agents and representatives shall (a) not unreasonably interfere with the operation, use and maintenance of the Property, (b) not damage any part of the Property, (c) not injure or otherwise cause bodily harm to Seller or any of its respective agents, contractors and employees or other third party, (d) promptly pay when due the cost of all inspections, tests or studies, (e) not permit any liens to attach to the Property by reason of the exercise of the rights under this Paragraph, (f) fully restore the Property to the condition in which the same was found before any such inspections, tests or studies were undertaken, and (g) not reveal or disclose to any third-party any information obtained as a result of such tests, inspections and studies concerning the Property except as may otherwise be permitted in this Agreement or as may be required by law. Buyer hereby agrees to indemnify, defend, protect and hold Seller and its agents, employees and contractors harmless from and against any and all liens, claims, losses, liabilities, damages, costs, expenses, causes of action (including reasonable attorneys' fees and court costs) arising out of Buyer's inspections, tests and studies, excluding the discovery of Hazardous Substances or other conditions.

PURCHASE AGREEMENT

- E. Termination.** Buyer may, at any time prior to 5:00 p.m. on the last day of the Due Diligence Period, terminate this Agreement in its sole and absolute discretion for any reason or no reason, by sending to Seller written notice indicating Buyer's election to so terminate the Agreement. If Buyer fails to terminate this Agreement prior to 5:00 p.m. on the last day of the Due Diligence Period in accordance with the provisions of this paragraph 4E, then Buyer shall have no further right to terminate pursuant to this paragraph 4E, and the only remaining contingencies to Buyer's obligation to consummate the transaction contemplated herein shall be the Conditions Precedent to Purchase and Sale as set forth in paragraph 5 below or as otherwise provided herein.

5. CONDITIONS TO PURCHASE

Conditions Precedent to Purchase. The obligation of Buyer to purchase the Property is expressly conditioned upon the satisfaction of each of the conditions set forth in this paragraph ("Condition Precedent"). Each Condition Precedent is for the sole benefit of Buyer and may be approved, disapproved, or waived by Buyer in the good faith exercise of Buyer's sole and absolute discretion.

- A. No Termination.** Buyer shall not have terminated this Agreement in accordance with paragraph 4E or pursuant to provisions of paragraph 11A.
- B. Title.** This purchase is contingent upon Buyer's good faith approval or disapproval of the Preliminary Title Report and all recorded exceptions to title prior to the expiration of the Due Diligence Period unless extended by Buyer as specified herein.
- C. Certificate of Acceptance.** This purchase is contingent upon a resolution of the City Council of the City of Morgan Hill authorizing the recordation of the Grant Deed and the deposit of a properly executed Certificate of Acceptance into escrow prior to the Close of Escrow.
- D. Seller Performance.** This purchase is contingent upon Seller's satisfactory and timely performance of all of its obligations under this Agreement prior to the Close of Escrow unless extended by Buyer as specified herein.
- E. Seller Representations.** This purchase is contingent upon Seller's providing Buyer with true, correct and complete representations and warranties as required herein, prior to the Close of Escrow.

6. SELLER REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that the following matters are true, correct and complete in all material respects as of the date of execution of this Agreement and will also be true and correct in all material respects as of the Closing Date, and shall survive the delivery of the Grant Deed, and Close of Escrow:

- A. Organization Authority.** Seller under this Agreement has the full power and authority to execute and deliver this Agreement and all documents now or hereinafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and such performance does not conflict with any obligations of the Seller thereunder. The individuals executing this Agreement and the instruments referred to herein on behalf of Seller, have the legal power, rights and actual authority to bind Seller to the terms and conditions thereof.
- B. No Violations.** Neither the execution, delivery or performance of this Agreement by Seller will result in the breach of any terms, conditions or provisions of, or conflict with or constitute a default under the terms of any indenture, deed to secure debt, mortgage, deed of trust, note, evidence of indebtedness, court order or any other agreement or instrument by which Seller or the Property is bound.

PURCHASE AGREEMENT

- C. No Litigation.** Seller has no knowledge of any pending or threatened litigation, actions, applications, orders, protests, proceedings, or complaints against or affecting title to the Property or Seller's interest therein, or any regulatory, administrative or legal complaints, enforcement actions, clean up orders or other proceedings concerning Hazardous Substances on the Property.
- D. Compliance with Laws.** Seller has received no written notice alleging violations of any federal, state or municipal laws or ordinances with regard to any portion of the Property.
- E. Existing Leases.** Except as specifically disclosed to Buyer in writing, there are no other contracts or agreements with respect to the occupancy of the Property or any portion thereof which will be binding upon Buyer or which will impose an obligation of providing relocation assistance under California Government Code Section 7260 after the Closing Date. To the best of Seller's knowledge, there is no outstanding and uncured claim of default made against Seller by any tenants under any lease of the Property prior to the date hereof.
- F. Service Contracts.** To the best of Seller's knowledge, there are no service contracts related to the Property which will be binding upon Buyer after the Closing Date.
- G. Seller Not a Foreign Person.** Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.
- H. Environmental Conditions.**
- i. **No Environmental Conditions.** Except as specifically disclosed to Buyer in writing, Seller has no knowledge of and has not received written notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal written notice alleging that conditions on the Property are or have been in violation of any Hazardous Substance Laws, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Hazardous Substance Laws, or informing or indicating: (i) the presence of any Hazardous Substances (as defined below) at, on, under and/or affecting the Property; (ii) any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property; (iii) any spills or disposal of Hazardous Substances that have occurred or are occurring off the Property as a result of any construction on, or operation in use of the Property; (iv) the presence of any PCB transformers serving or stored on the Property; (v) underground storage tanks located on the Property; or (vi) any failure to comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances in connection with the operation and use of the Property.
 - ii. **Hazardous Substances.** As used in this Agreement, "Hazardous Substances" shall mean any chemical, compounds, material, substance, or other matter that: (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Substances Laws; (b) is controlled or governed by any Hazardous Substances Laws or gives rise to any reporting, notice or publication requirement hereunder, or gives rise to any liability, responsibility or duty on the part of any party hereto with respect to any third person; or (c) any asbestos or asbestos-containing material.
 - iii. **Hazardous Substances Laws.** As used in this Agreement, "Hazardous Substances Laws" mean any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law" relating to Hazardous Substances including,

PURCHASE AGREEMENT

without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Toxic Substance Control Act, California Health & Safety Code section 25117, sections 6680-6685 of Title 22 of the California Administrative Code, Division 4, Chapter 30, and any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

7. TITLE

- A. Preliminary Report.** Buyer shall obtain and review a current Preliminary Title Report for the Property.
- B. Title.** Title to the Property shall be conveyed to Buyer upon the Close of Escrow. Seller shall deliver title by grant deed, free and clear of all liens except for: (i) liens securing real property taxes and assessments which constitute liens not yet due and payable; and (ii) such other exceptions and reservations shown on the Preliminary Title Report which are approved by Buyer.
- C. Title Policy.** The Title Company shall issue a California Land Title Association ("CLTA") Owner's Policy of Title Insurance in the amount of the purchase price insuring fee simple title to the Property vested in Buyer subject only to any approved exceptions and Title Company's standard pre-printed exceptions, with liability in the amount of the purchase price ("Title Policy").

8. FINAL VERIFICATION OF CONDITION

Buyer shall have the right to make a final inspection of the Property within five (5) days prior to Close of Escrow to review the condition of the Property and Seller's compliance with the terms of this Agreement, prior to closing.

9. ESCROW

- A. Opening Escrow.** Promptly after Acceptance of this Agreement, Buyer shall open an escrow with the Escrow Holder for the purpose of consummating the purchase and sale contemplated by this Agreement ("Escrow") by depositing an executed copy of this Agreement with the Escrow Holder. This Agreement shall constitute escrow instructions to Escrow Holder.
- B. Additional Escrow Instructions.** Seller and Buyer shall, promptly upon request by Escrow Holder, execute such additional escrow instructions as may be reasonably required by Escrow Holder, including Escrow Holder's standard printed conditions and stipulations with respect to escrows concerning the purchase and sale of real property; provided, however, that if there is any conflict between the provisions of this Agreement and the provisions of any such additional instructions, the provisions of this Agreement shall prevail.
- C. Closing Date.** Escrow shall close, and the Grant Deed shall be recorded in the Office of the County Recorder of Santa Clara County, California immediately after the expiration of the Due Diligence Period ("Close of Escrow") but no later than December 31, 2019, unless extended pursuant to terms of this Agreement or by mutual agreement of the parties.
- D. Seller Deliveries to Escrow.** Prior to the Close of Escrow, Seller shall deliver to Escrow Holder, all of the following documents and items:
 - i. The duly executed and acknowledged Grant Deed.

PURCHASE AGREEMENT

- ii. Such certifications, declarations or other documents as may be required under Internal Revenue Code §1445 and California Revenue and Tax Code §18662, together with any and all other documents required by law pertaining to foreign or out-of-state sellers.
- iii. Any certificate of occupancy for the Property and all assignable licenses and permits relating to the use, occupancy or operation of the Property.
- iv. All books, records, booklets, catalogs, advertising material and manuals relating to the use or operation of the Property.
- v. Such funds as required to pay Seller's share of the costs to close escrow.
- vi. If any Leases are in effect for the Property then:
 - a. All original Leases and any contract(s) to be assumed by Buyer, copies of all originals of the books and records of account, contracts, copies of correspondence with the tenants, unpaid bills and other papers or documents that pertain to the Property.
 - b. An executed and acknowledged Assignment of Leases evidencing the assignment to Buyer of all of Seller's right, title and interest in and to any Leases in effect for the Property.
 - c. Tenant estoppel certificates, in a form provided by the Buyer.
 - d. One executed letter addressed to all the tenants of the Property advising them of the consummation of the purchase and sale of the Property and directing the tenants to pay the rent and other charges due under the Leases to Buyer.

E. Buyer Deliveries to Escrow. Prior to the Close of Escrow, Buyer shall deliver to Escrow Holder, all of the following documents and items:

- i. The cash amount of the Purchase Price together with an additional sum sufficient to cover Buyer's closing costs.
- ii. A properly executed Certificate of Acceptance.
- iii. An original executed letter to the Santa Clara County Tax Assessor, pursuant to Revenue and Taxation Code section 5082.1 providing notification of the apportionment date and requesting cancellation of taxes pursuant to Revenue and Taxation Code section 5086.1.

F. Escrow Charges. Escrow and title charges shall be paid in the manner provided below.

- i. **Seller shall pay:** (a) its own attorneys' fees incurred in connection with this Transaction and (b) ½ Escrow fees.
- ii. **Buyer shall pay:** (a) the cost of the Title Policy, (b) all recording fees, (c) ½ Escrow fees, (d) the full cost of any and all documentary transfer tax or stamp or other sales tax; and (e) its attorneys' fees incurred in connection with this Transactions.

G. Pro-Rated Taxes. Taxes for the year in which this Escrow closes shall be cleared and paid current in the manner required by Section 5086 of the Revenue and Taxation code, if unpaid as of the close of Escrow. All taxes, assessments and other charges attributable to the Property shall be pro-rated as of the Closing Date based on a three hundred sixty-five-day year (365).

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- H. Operating Expenses and Security Deposits.** All ordinary operating expenses and charges of the Property, including without limitation, public utility charges, maintenance and other service charges shall be pro-rated at the Close of Escrow effective as of 11:59 p.m., on the date prior to the Closing Date. If the exact amount of any item to be pro-rated is not known as of the Closing Date, the proration shall be based on a reasonable estimate thereof made by Seller and Buyer, and as soon after the Closing Date as the exact amount of the item is known, the proration shall be adjusted, if necessary, and appropriate cash adjustments shall be made by Buyer and Seller if necessary. Rent and other charges under the Leases for the calendar month in which the Closing Date falls shall be pro-rated between Buyer and Seller as of 11:59 p.m., on the day prior to the Closing Date. The amount of all unapplied security deposits under the Leases shall be credited to Buyer.
- I. Closing Escrow.** When the Conditions Precedent have been satisfied or waived by Buyer and Seller; the Escrow Agent has received all necessary cash and documents; the title company is ready to issue the Title Policy; and neither party has terminated the Agreement; then Escrow Agent shall immediately close Escrow by doing the following:
- i. Record the Grant Deed.
 - ii. Deliver the following items, documents and monies to the parties as set forth below:
 - a. **To Seller:** the cash portion of the Purchase Price except as reduced by the amount of Seller's closing costs or other expenses.
 - b. **To Buyer:** the Title Policy, the Tenant Estoppel Certificate, the Assignment of Leases, and all other documents deposited into Escrow by Seller.
 - c. **To Buyer and Seller,** a signed copy of the Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.
- J. Closing Date.** The date upon which the Grant Deed is recorded shall be deemed the "Closing Date".
- K. Default.** If Escrow fails to close as a result of the default of this Agreement by a party, the defaulting party shall pay all title and escrow charges in addition to all other rights and remedies of the non-defaulting party.

10. REMEDIES

A. Buyer's Remedies.

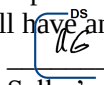
- i. **Failure of Condition Precedent.** If any of the Conditions Precedent are not satisfied, Buyer shall, in the exercise of good faith, have the right to do any of the following within the applicable time period:
 - a. **Waive** the condition in question and proceed with the purchase of the Property pursuant to all other terms of this Agreement. If Buyer does not provide Seller with written disapproval of any of the Conditions Precedent within the applicable time period, Buyer shall be deemed to have approved the Condition Precedent and waived the contingency.
 - b. **Extend** the Close of Escrow for a period of time by mutual agreement of Buyer and Seller, not to exceed forty five (45) days, to allow said conditions to be satisfied, by providing written notice to Seller, subject to Buyer's further rights to terminate this Agreement upon

PURCHASE AGREEMENT

the expiration of the period of such extension if all said conditions have not then been satisfied.

- c. **Terminate** this Agreement by giving written notice thereof to Seller and Escrow Agent in which event and except for those provisions which survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations hereunder.
- ii. **Seller Default.** If Seller fails to perform any of its obligations or is otherwise in default under this Agreement prior to the Close of Escrow, Buyer shall have the right to give notice to Seller specifically setting forth the nature of said failure and stating that Seller shall have a period of three (3) calendar days to cure such failure. If Seller has not cured such failure within such period or, if such failure is not capable of being cured within three (3) calendar days, then Buyer's remedies shall include the following:
 - a. **Waive** such failure and proceed to close escrow pursuant to all of the other terms of this Agreement, by providing written notice thereof to Seller.
 - b. **File an action** for damages against Seller and/or for specific performance to cause Seller to convey the Property to the Buyer pursuant to the terms and conditions of this Agreement and/or seek any other remedies as may be available at law or in equity.
 - c. **Terminate** this Agreement by giving written notice thereof to Seller and Escrow Agent in which event and except for those provisions which survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations hereunder.

- B. **Seller's Remedies.** If Buyer fails to perform any of its obligations or is otherwise in default under this Agreement, Seller shall have the right to give notice to Buyer specifically setting forth the nature of said failure and stating that Buyer shall have a period of five (5) calendar days to cure such failure. If Buyer has not cured such failure within such period or, if such failure is not capable of being cured within five (5) calendar days but in no case later than December 31, 2019, Seller may terminate this Agreement by giving written notice thereof to Buyer and Escrow Agent, in which event and except for those provisions of this Agreement which survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations hereunder.



 Seller's initials

 Purchaser's initials

- 11. **Possession.** Seller shall deliver possession of the Property to Buyer at noon on the Closing Date, except as to those portions of the Property that are subject to any Leases disclosed to Buyer.
- 12. **Brokers.** Buyer represents and warrants that, there are no brokers' fees or finders' fees arising out of this transaction. Buyer acknowledges that Seller is represented by Peter Fleming, its' Broker, and is responsible for commissions and fees due to Broker from this transaction. Each party shall indemnify, defend, and hold the other and the other's officers directors, agents, and employees harmless from any claim, loss, cost, damage or expense including, without limitation, attorney's and expert fees and costs and court costs arising out of or incurred in connection with any claim by any other broker, finder or other person or entity for any brokerage commission, finder's fee or other amount in connection with any acts or dealings with such indemnifying party with any such broker, finder or other person or entity.
- 13. **Risk of Loss.**

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- A. Major Damage.** If the Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, including but not limited to, fire, flood, earthquake, accident or other casualty which, according to the Buyer's best estimate, would cost more than ten thousand (\$10,000.00) dollars to repair ("Major Damage"), Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Property.
- i. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees.
 - ii. If Buyer elects to purchase the Property, Buyer shall be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price.
- B. Minor Damage.** In the event that Buyer's best estimate of the cost of repair is less than ten thousand dollars (\$10,000.00), Buyer shall purchase the Property and be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price.
- C. Extension.** Should any damage or destruction occur prior to the Close of Escrow, the date scheduled for the Close of Escrow shall be extended for a period of time not to exceed thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this paragraph, Buyer shall be deemed to have elected to purchase the Property.

14. SURVIVAL AFTER CLOSE OF ESCROW

All representations, warranties, covenants, conditions, agreements and obligations contained in or relating to this Agreement shall survive the Close of Escrow and the recordation of the Grant Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

15. GENERAL PROVISIONS

- A. Entire Agreement** This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by all parties.
- B. Attorney Fees and Costs.** In the event of any legal action to interpret or enforce the terms hereof, or to obtain money damages arising out of this agreement, the prevailing party shall be awarded its reasonable attorney's fees, costs and expenses incurred therein.
- C. 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, which is the exclusive venue for any action or dispute arising out of this Agreement.

PURCHASE AGREEMENT

- D. Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties hereto. No rule of construction or interpretation shall apply against any 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.
- E. Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in the document, and the document shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein and the rest of the Agreement shall remain in full force and effect.
- F. Successors Bound.** The terms of this Agreement shall be binding upon and shall benefit the parties hereto and their respective heirs, successors and assigns.
- G. No Waiver.** No delay or omission by any party hereto in exercising any right under this Agreement shall operate as a waiver of such right.
- H. Time of the Essence.** Time is of the essence with regard to all matters contained in this Agreement.
- I. Captions.** All captions and headings in this Agreement are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.
- J. No Third-Party Beneficiaries Intended.** This Agreement is made solely for the benefit of the parties hereto and their permitted heirs, successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.
- K. Joint and Several.** If more than one person or entity share the same obligations herein, the obligations of each and all of them under this Agreement shall be joint and several.
- L. Notices.** Any notice or communication required or permitted to be given under this Agreement will be written and shall be given by personal delivery, or by overnight delivery by a nationally recognized overnight courier service (such as UPS or Federal Express). Notice will be deemed given upon actual receipt in the case of personal delivery, or the next business day after the notice is sent via a courier service. Notices shall be delivered and/or addressed to the parties as follows:

i. To Seller:

Angelo Grestoni
 c/o Peter Fleming, Broker
 8050 Santa Teresa Blvd, Unit 210.
 Gilroy, CA 95020

ii. To Buyer:

Chris Ghione

Attachment: Purchase Agreement Condit Dunne Property (2602 : Sports Facility Land Acquisition)

PURCHASE AGREEMENT

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

City Attorney
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Telephone: 408-782-9154

Telephone: (408) 779-7271

Facsimile: 408-779-7236

Facsimile: (408) 779-1592

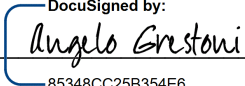
Any party may, from time to time in the manner herein provided, specify a different address for notice purposes.

M. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

N. 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.

SELLER

Angelo Grestoni

By:  85348CC25B354E6...

Print Name:

Angelo Grestoni

Its Owner

BUYER

City of Morgan Hill,
a municipal corporation

By: _____
Christina Turner
City Manager

APPROVED AS TO FORM

Donald Larkin
City Attorney

**EXHIBIT A
LEGAL DESCRIPTION**

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follow:

Lot 49, as delineated upon that certain map entitled "Catherine Dunne Ranch Map No. 7", filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, in Book "L" of Maps, at Page 26.

EXCEPTING THEREFROM all that portion lying Southerly and Southwesterly of the most Northeasterly line of that certain Parcel of land designated as Parcel 2A in that Final Order of Condemnation recorded October 28, 1969 in Book 8717 of Official Records, Page 376.

APN: 817-13-008

Attachment: Purchase Agreement Condit Dunne Property (2602 : Sports Facility Land Acquisition)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 18, 2019

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

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

RECOMMENDATION(S)

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01;
3. Review and approve the City Council Appointments to Outside Agencies; and
4. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Community History
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

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

REPORT NARRATIVE:

Mayor Pro Tempore

The City Council has an adopted policy, which sets forth the criteria for the selection of Mayor Pro Tempore annually for a one-year term. The adopted policy is intended to provide every Council Member with the opportunity to serve as Mayor Pro Tempore. Nomination for the Mayor Pro Tempore seat is generally based on: (1) the length of time that an individual has served on the City Council, and (2) whether or not the nominee has previously had the opportunity to serve as Mayor Pro Tempore. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. The Mayor or any member of the City Council may nominate a member to serve as

Mayor Pro Tempore. A copy of the Council Policy CP-99-01 is attached and the recent Mayor Pro Tempore history is as follows:

**CITY COUNCIL
MAYOR PRO TEMPORE RECENT HISTORY**

	From:	To:
Council Member Siebert	December 5, 2012	January 15, 2014
Council Member Librers	January 15, 2014	December 3, 2014
Council Member Carr	December 3, 2014	December 2, 2015
Council Member Constantine	December 2, 2015	December 14, 2016
Council Member Carr	December 14, 2016	January 17, 2018
Council Member Constantine	January 17, 2018	December 19, 2018
Council Member Spring	December 19, 2018	December 4, 2019

Appointments to Outside Agencies

The City Council is committed to actively participating in regional committees and agencies as an important way to influence decisions that benefit Morgan Hill. The Appointments to Outside Agencies chart only includes appointments made by the City Council to outside agencies. It does not include appointments made by other agencies or organizations. Staff requests that the City Council review the attached Appointments to Outside Agencies chart. The Mayor makes appointments, subject to Council approval.

Once the appointments are made, the City is required to post the Fair Political Practices Commission (FPPC) Form 806 on its website. The Form 806 lists all the paid appointed positions to which an official can vote on the City's website including those assignments that do not receive a stipend. Staff requests that Council Members notify the City Clerk's Office immediately when new assignments are made and when there is compensation of \$250.00 or more in a 12-month period.

Cities Association – City Selection Committee Appointment

The Cities Association is one of the outside agencies that Council Members are appointed to. It is an association that represents the 15 cities in the county. Their City Selection Committee also makes appointments to local and regional bodies. One of those appointments is to the Santa Clara County Recycling and Waste Reduction Commission (commission). The City Selection Committee will be making its appointments to the commission in January and are asking that Council Members interested in serving on the commission submit their letters of interest by the end of December. Per the commission bylaws the cities of Morgan Hill and Gilroy are represented by one primary and one alternate delegate. The primary delegate has historically been filled by a Council Member from the City of Gilroy as the commission's meetings, which take place on the 4th Wednesdays of the month, conflict with the City of Morgan Hill's City Council meetings. As such, staff recommends that if a member or members of the Morgan Hill City Council are interested in serving on the commission, it be as the alternate delegate. If more than one Council Member is interested in serving on the commission, staff recommends that they submit their letter of interest to the Mayor by December 18th for review. At that point, the Mayor would review the Council

Members' reasons for their interest in serving on the commission along with their current appointments to determine the best applicant to move forward to the City Selection Committee for consideration and possible appointment.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the process for selection of the Mayor Pro Tempore, as well as provide a listing of the City Council appointments to outside agencies.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND commission ACTIONS:

The Council selects a Council Member to serve as the Mayor Pro Tempore and appoints Council members to outside agencies annually.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts. Selection of Mayor Pro Tempore and review of appointments to outside agencies are activities of the City Council's annual workplan.

CEQA (California Environmental Quality Act):

Selection of a Mayor Pro Tempore and reviewing the appointment listing are administrative governmental activities that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. CP-99-01 Selection of Mayor Pro Tem 12-19-16.pdf
2. DRAFT Council Member Assignments to Committees 2020

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 99-01

(Rescinded CP 94-05, CP 98-03)

SUBJECT: SELECTION OF MAYOR PRO TEMPORE

DATE: December 17, 1999, Reviewed 6/27/07,

AMENDED: August 24, 2005, December 19, 2016

It is the policy of the City Council of the City of Morgan Hill to annually nominate and select a member to serve as Mayor Pro Tempore for a one year term. The Mayor or any member of the City Council may nominate a member, who shall be selected by majority vote.

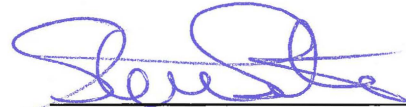
In order to provide every member with an opportunity to serve as Mayor Pro Tempore, it is the policy of the City Council that nominations be made on the basis of the length of time that a nominee has served on the City Council, and whether or not the nominee has previously had the opportunity to serve. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. If more than one individual is nominated, the first person to receive a majority of the votes shall be selected to serve.

Selection of Mayor Pro Tempore shall occur at the first regular meeting of the City Council held after the general municipal election, and after the new members have been sworn in and have taken their seats; or at the second regular meeting in November in each year that a general municipal election is not held.

The Mayor Pro Tempore shall serve at the pleasure of the City Council and may be removed from the appointed position by a majority vote of the Council. The City Council shall fill all vacancies for Mayor Pro Tempore in accordance with the selection procedure set forth herein.

This policy shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, MAYOR

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Countywide	<u>Santa Clara County Library District Joint Powers Authority</u> 1370 Dell Avenue Campbell, CA 95008 Cynthia Rios Garcia, Secretary CRiosGarcia@sccl.org (408) 293-2326, ext. 3090 https://www.sccl.org/About/Governance/JPA-Board-Meetings Tracy Ellenberger, Executive Assistant tellenberger@sccl.org 408-293-2326 x3093	Provide policy direction and governance for the Santa Clara County Library District. Cities of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Milpitas, Monte Sereno, Morgan Hill & Saratoga.	Meets 4 times per year typically on the 4th Thursday of month; 1:30—3:30 pm <u>12:00 pm</u> 1370 Dell Avenue Campbell, CA 95008	(P) Constantine (A) Carr	

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Environmental	<u>Santa Clara Valley Habitat Agency Governing Board</u> 535 Alkire Avenue, Suite 100 Morgan Hill, CA 95037 Ed Sullivan, Executive Officer Edmund.sullivan@scv-habitatagency.org (408) 779-7261 https://scv-habitatagency.org/31/Governance-Policies	Serves as governing body for JPA and makes all decisions except those delegated to the Implementation Board Staff.	Quarterly, 3 rd Thursday 3:00 pm - 5:00 pm Morgan Hill City Council Chamber 17555 Peak Avenue	(P) Spring (P) Constantine (A) McKay (A) Carr	
Environmental	<u>Santa Clara Valley Habitat Agency Implementation Board</u> 535 Alkire Avenue, Suite 100 Morgan Hill, CA 95037 Ed Sullivan, Executive Officer Edmund.sullivan@scv-habitatagency.org (408) 779-7261 https://scv-habitatagency.org/31/Governance-Policies	Makes recommendations to the Governing Board regarding fees and budget, appoints executive officers and hiring of other agency personnel, services and equipment, makes decision regarding real property acquisition and makes recommendations to the executive officers regarding grants and other funding.	Bi-Monthly, 3 rd Thursday 3:00 pm - 5:00 pm Morgan Hill City Council Chamber 17555 Peak Avenue	(P) Constantine (A) Spring (A) McKay (P) Carman (A) Little	

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Environmental	<u>Silicon Valley Clean Energy Authority</u> 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 Andrea Pizano andreap@svcleanenergy.org (408) 721-5301 x.1005 https://www.svcleanenergy.org/board	The JPA created to collectively study, promote, develop, conduct, operate, and manage energy supply and efficiency programs related to the provision of clean power.	2 nd Wednesday of the month 7:00 pm Cupertino City Hall 10350 Torre Ave	(P) Martinez Beltran (A) Eulo	
Flood Control	<u>Pajaro River Watershed Flood Prevention Authority</u> PO Box 809 Marina, CA 93933 Ana Flores Regional Analysis & Planning Services aflores@ambag.org (831)883-3750 ext. 300 http://www.pajaroriverwatershed.org	Identify, evaluate, fund and implement environmentally sound flood prevention and control strategies in the Pajaro River Watershed, on an intergovernmental, cooperative basis as required by the Pajaro River Watershed Flood Prevention Authority Act.	Meet bi-monthly 1 st Friday 9:00 am Meeting locations alternate between the Cities of Gilroy, Hollister, Salinas & Watsonville	(P) Spring/Carr (non-voting member)	Chris Ghione, Public Services Director

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Flood Control	<u>Santa Clara Valley Water District Elected Officials Quarterly Meeting (Llagas Creek PL 566)</u> 5750 Almaden Expressway San Jose, CA 95118-3686 (mailing address) Michelle King, Clerk of the Board board@valleywater.org (408) 265-2600	Specifically address Llagas Creek flooding and PL 566 legislation and Anderson Dam Retrofit Project.	Quarterly on Fridays 10:00 am Morgan Hill City Hall, Grand Conference Room 17575 Peak Ave	(P) Spring (P) Carr (A) Martinez Beltran	Chris Ghione, Public Services Director
Housing	<u>Santa Clara County Housing & Community Development Advisory Committee (HCDAC)</u> Office of Supportive Housing 3180 Newberry Drive, Ste 150 San Jose, CA 95118 Tracy Cunningham, Management Analyst Tracy.cunningham@hhs.sccgo.org (408) 793-0560	The role of the HCD Advisory Committee is to be the policy-recommending body to the Board of Supervisors on the planning, implementation, monitoring, and evaluation of the Urban County HCD Program. The Committee guides the development of a coordinated housing and community development plan and hears project proposals, reviews staff recommendations, and makes recommendations to the Board of Supervisors for final approval and forwarding to HUD.	As needed 70 West Hedding Street, 1 st Floor Board Chambers	(P) McKay (A) Martinez Beltran	Rebecca Garcia, Housing Manager

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Attachment: DRAFT Council Member Assignments to Committees 2020 (2562 : Selection of Mayor Pro

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Land Use/ Transportation	<u>South County Joint Planning Advisory Committee</u> Santa Clara Co. Planning Office 70 W. Hedding, E Wing, 7 th Floor San José, CA 95110	Cities of Gilroy & Morgan Hill, County of Santa Clara and unincorporated area of San Martin addressing issues re: land use planning of regional significance. Staff coordination rotates between the three sponsoring organizations, Gilroy, Morgan Hill, and Santa Clara County.	As-needed	(P) Carr (A) McKay Joseph Mueller, Planning Commissioner Dennis Delisle, Citizen Representative _____, Citizen Representative	Jennifer Carman, Community Development Director Rob Eastwood, County of Santa Clara Kristi Abrams, City of Gilroy

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Council Assignments to outside agencies\Council Member Assignments to Committees 2019 DRAFT.docx~~

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Local Partnership	<u>City-School Liaison Committee</u> Morgan Hill Unified School District; 15600 Concord Circle or City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037-4128 Kelly Shriefer, Secretary to the Superintendent, MHUSD shreiferk@mhusd.org (408) 201-6001 Michelle Bigelow, Deputy City Clerk Michelle.bigelow@morganhill.ca.gov (408) 310-4678 http://mhusd.org/board-of-education/cityschool-liaison-committee/	To facilitate communication between the City and School District on issues of common concern.	Every other month, typically on Fridays 8:30 am Meetings alternate between the City of Morgan Hill, City Hall 17575 Peak Ave and the Morgan Hill Unified School District Office 15600 Concord Cir	(P1) Carr (P2) Constantine (A1) Martinez Beltran (A2) McKay	Christina Turner, City Manager David Swing, Police Chief Chris Ghione, Public Services Director

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Local Partnership	<u>South County United for Health Leadership Team</u> County of Santa Clara, Public Health Department Active and Safe Communities Sobrato Center for Nonprofits 1400 Parkmoor Avenue, Suite 120 B San Jose, CA 95126 Alice Kawaguchi, MPH, RD Health Care Program Manager II Alice.Kawaguchi@PHD.sccgov.org (408) 793-2733	South County United for Health is a collaborative effort to create healthier communities where people live, work, learn and play in the cities of Morgan Hill, Gilroy, San Martin, and parts of unincorporated Santa Clara County, also known as South County.	Meets quarterly on Thursdays 10:00 am to noon Morgan Hill Community & Cultural Center 17000 Monterrey Road February 7, 2019 April 4, 2019 August 1, 2019 October 3, 2019	(P) Spring (A) Constantine	
Regional Government	<u>ABAG</u> 375 Beale Street San Francisco Fred Castro, Clerk of the Board fcastro@bayareametro.gov (415) 820-7913 https://abag.ca.gov/overview/ga.html	Council of governments representing Cities & Counties in the Bay Area; a comprehensive planning agency addressing regional social, environmental and economic issues.	Meets annually, usually in April Location varies (Oakland or San Francisco)	(P) Martinez Beltran (A) McKay	(P) Leslie Little, Assistant City Manager for Development Services (A) Jennifer Carman, Community Development Director

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Regional Government	<u>Cities Association of Santa Clara County Board</u> PO Box 1079 Los Gatos, CA 95031 Andi Jordon, Executive Director andi@citiesassociation.org (408) 766-9534 http://citiesassociation.org/about-us.php	Promotes cooperation, represents the mutual interest, and presents a unified voice for the fifteen cities of Santa Clara County; each city in Santa Clara County appoints the Mayor or a Council Member to the Board of Directors; advocates for positive action to enhance the quality of life for the people of our county.	Monthly 2nd Thursday 7:00 pm 456 W. Olive Ave Sunnyvale	(P) Constantine (A) Spring Mayor Pro Tem is the Alternate	None, unless Morgan Hill serves as President, then City Manager
Regional Government	<u>Cities Association of Santa Clara County Board</u> <u>City Selection Committee</u> PO Box 1079 Los Gatos, CA 95031 Andi Jordan, Executive Director andi@citiesassociation.org (408) 766-9534 http://citiesassociation.org/about-us.php	The committee makes recommendations on appointments to regional and countywide organizations.	Meets as needed before the Cities Association Board Meeting 456 W. Olive Ave Sunnyvale	(P) Constantine (A) Spring Mayor Pro Tem is the Alternate	
Regional Government	<u>Cities Association of Santa Clara County Board</u> <u>Legislative Action Committee</u> PO Box 1079 Los Gatos, CA 95031 Andi Jordan, Executive Director andi@citiesassociation.org (408) 766-9534 http://citiesassociation.org/about-us.php	The committee provides basic legislative updates to cities with little or no legislative staff, organizes emergency responses to urgent issues, and enables the Cities Association to advocate on issues of mutual interest.	Meets as needed before the Cities Association Board Meeting 456 W. Olive Ave Sunnyvale	(P) Constantine (A) Spring Mayor Pro Tem is the Alternate	

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Attachment: DRAFT Council Member Assignments to Committees 2020 (2562 : Selection of Mayor Pro

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Regional Government	<u>League of California Cities Peninsula Division</u> Seth Miller P.O. Box 5630 San Francisco, CA 94080 sethl_miller@yahoo.com (415) 595-8629 http://www.cacities.org/Member-Engagement/Regional-Divisions/Peninsula	Comprised of the 36 cities from San Francisco to Gilroy, division members work together to enhance the quality of life in our communities, our region and our state.	4 meetings per year: January 30, 2019; 11:30 – 1:30 March 20, 2019; 8:00 – 10:00 May 22, 2019; 11:30 – 1:30 August 28, 2019; 8:00 – 10:00 special meetings added as needed	(P) Martinez Beltran (A) McKay	
Transportation	<u>Caltrain Local Policy Maker Group</u> 1250 San Carlos Avenue San Carlos, CA 94070 (650) 508-6200 Casey Fromson fromsonc@samtrans.com (650) 508-6493 http://www.caltrain.com/projects/plans/CaltrainModernization/Meetings.html	Advisory group, comprised of elected officials and provides a formal venue to facilitate local input and guidance on the Caltrain Modernization Program.	Monthly 4 th Thursday 5:30 pm Edward J. Bacciocco Auditorium, Second Floor 1250 San Carlos Ave	(P) Carr (A) Constantine	Edith Ramirez, Economic Development Director Tiffany Brown, Associate Planner

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Transportation	<u>Comprehensive County Expressway Planning Study Policy Advisory Board</u> Santa Clara County Roads and Airports 101 Skyport Drive San Jose, Ca 95110-1302 Ellen Talbo ellen.talbo01@rda.sccgov.org (408) 573-2462 http://sccgov.ig2.com/citizens/default.aspx?	Provides an elected officials' forum for policy input to the <i>Expressway Plan 2040</i> – a long range plan for the improvement and maintenance of the eight County expressways and the Santa Teresa-Hale Corridor. All areas of need are included: capacity and operational improvements, signal operations, high-occupancy vehicle (HOV) lanes, bicycle and pedestrian improvements, finishing elements, and ongoing operating and maintenance needs and funding strategy recommendations.	As needed 70 West Hedding Street, 1 st Floor Board Chambers	(P) McKay (A) Constantine	Chris Ghione, Public Services Director

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Transportation	<u>Santa Clara Valley Transportation Authority (VTA) Policy Advisory Committee (PAC)</u> 3331 North First Street, Building B-1 st Floor San Jose, CA 95134-1927 Steven Flynn Advisory Committee Coordinator Elaine Baltao, Board Secretary Board.secretary@vta.org (408) 321-5680 http://www.vta.org/get-involved/advisory-committee/policy-advisory-committee-pac	Advises the Authority Board of Directors on policy matters relating to transportation and congestion management. <i>Board Member cannot serve on the PAC.</i> <i>(Note: participation is State-mandated)</i>	Monthly, 2 nd Thursday 4:00 pm VTA River Oaks Campus 1331 N. 1 st Street Room B-104 San Jose	(P) Constantine (A) Martinez Beltran	Chris Ghione, Public Services Director Edith Ramirez, Economic Development Director
Transportation	<u>Santa Clara Valley Transportation Authority (VTA) MG - Group 4</u>	Cities of Morgan Hill and Gilroy, advises the PAC (see above) on transportation policy and funding issues.	Tuesday before each Thursday Board meeting, 9:00 am Morgan Hill City Hall 17575 Peak Ave	(P) Carr (A) Constantine	Christina Turner, City Manager Chris Ghione, Public Services Director Edith Ramirez, Economic Development Director

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Transportation	<u>Santa Clara Valley Transportation Authority (VTA) Board of Directors</u> 3331 North First Street San Jose, CA 95134-1906 Elaine Baltao, Board Secretary board.secretary@vta.org (408) 321-5680 http://www.vta.org/get-involved/board-of-directors	Reviews issues relating to transportation and congestion management.	Monthly, 1 st Thursday 5:30 pm County Government Center 70 W. Hedding St. San Jose	(P) Carr (A) Marie Blankley (Gilroy) <i>(Alternates between MH and Gilroy every two years based on VTA preference – sometimes longer for continuity)</i>	Christina Turner, City Manager Chris Ghione, Public Services Director
<u>Transportation</u>	<u>South County Transportation</u>	<u>Discuss transportation items of mutual interest to the cities of Morgan Hill and Gilroy</u>	<u>(P) Constantine</u> <u>(P) Carr</u>	<u>Christina Turner,</u> <u>City Manager</u> <u>Chris Ghione,</u> <u>Public Services Director</u> <u>Edith Ramirez,</u> <u>Economic Development Director</u>	

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Water/Wastewater	<u>Santa Clara Valley Water Commission</u> 5750 Almaden Expressway San Jose, CA 95118-3686 (mailing address) Glenna Brambill gbrambill@valleywater.org (408) 630-2408	Advises the District on water supply, legislative issues and integrated water resource management. <i>(Note: Most issues relate to imported water; Morgan Hill is 100% ground water)</i>	12:00 pm-2:00 pm January 23, 2019 April 10, 2019 July 24, 2019 October 23, 2019 January 22, 2020 Santa Clara Valley Water District Headquarters Building Boardroom 5700 Almaden Expressway, San Jose	(P) Constantine (A) Martinez Beltran	Dan Repp, Deputy Director for Utilities Services or Tony Eulo, Program Administrator <i>(Note: Staff member serves as alternate)</i>
Water/Wastewater	<u>South County Regional Wastewater Authority (SCRWA) Board Meeting</u> 1500 Southside Drive Gilroy, CA 95020 Gina Bonnell Gina.bonnell@ch2m.com Secretary/Clerk of the Board (408) 848-0480 http://www.ci.gilroy.ca.us/561/South-County-Regional-Wastewater-Authority	The South County Regional Wastewater Authority established by Joint Powers Agreement (Cities of Gilroy & Morgan Hill) to provide common authority relating to Joint Wastewater Gilroy/Morgan Hill Sewage Treatment Plant located in Gilroy.	1 st Wednesday of the Month 8:00 am 1500 Southside Drive Gilroy	(P1) Carr (P2) Spring (A) Constantine (A) Martinez Beltran (A) McKay	Dan Repp, Deputy Director for Utilities Services or Chris Ghione, Public Services Director Christina Turner, City Manager

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Page 13 of 14 Approved 2/6/19

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Water/Wastewater	<u>Joint Water Resource Committee</u> 5750 Almaden Expressway San Jose, CA 95118-3686 (mailing address) Garth Hall ghall@valleywater.org (408) 630-2750 http://www.valleywater.org/About/CitiesofGilroyMorganHill.aspx X	Advance South County Water interests. This joint committee is made up of two City Council members each from Morgan Hill and Gilroy, and two Santa Clara Valley Water District (SCVWD) Board members. The members from the two cities will also represent the South County Regional Wastewater Authority (SCRWA). Policy matters to be discussed include recycled water, groundwater, and long-term water resource planning.	Meetings follow SCRWA Board Meetings - 1 st Wednesday of the month 8:30 am (at the request of the committee) 1500 Southside Drive Gilroy	(P1) Carr (P2) Spring (A) Constantine (A) Martinez Beltran (A) McKay	Christina Turner, City Manager Chris Ghione, Public Services Director

LIST OF CITY COUNCIL ADJUNCT COMMITTEES

Mayor Rich Constantine

- Governance, Transparency and Labor Relations Policy Committee for the League of California Cities (Chair)
- City Liaison to the Sister City Committee
- Board Member of the Healthier Kids Foundation
- South County Youth Task Force
- Morgan Hill Chamber of Commerce Board (Mayor is ex-officio member)

Council Member Larry Carr

- Silicon Valley Regional Interoperability Authority (appointment through VTA)
- Capital Program Committee of VTA (Chair)
- Governance & Audit Committee of VTA
- Mobility Partnership Advisory Board for VTA
- Administration & Finance Committee of VTA (Chair)

Council Member John McKay

- Downtown Association
- Santa Clara County Representative to the Peninsula Division of the League of California Cities
-

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Council Member Yvonne Martinez Beltran

- City Liaison to the Sister City Committee (alternate)

From: [Christina Turner](#)
To: [CityCouncil](#)
Cc: [Donald Larkin](#); [Leslie Little](#); [Jennifer Carman](#); [Edith Ramirez](#); [John Lang](#); [Michelle Bigel](#)
Subject: RE: Request removal of Agenda Item No. 8 from Consent Calendar for Dec 18, 2019 City Council Meeting
Date: Tuesday, December 17, 2019 10:44:44 PM

Hi Mayor and Council – in response to the inquiry below, we wanted to provide the following information to you:

The purpose for seeking a Priority Production Area designation within Morgan Hill is to identify areas the City desires to maintain or grow jobs of an industrial nature. It is important to note that a Priority Production Area (PPA) does not supersede/eliminate/augment any local control over Morgan Hill's General Plan and Zoning.

What a PPA designation means:

- Identifies where a City wants to maintain or grow jobs consistent with local Zoning and General Plans
- Makes a City eligible to apply for any Federal and State related Planning grants through Bay Area Metro (ABAG/MTC)
- Further strengthens (sends a clear message) a City's desire to preserve industrial lands for jobs

What a PPA designation does not do:

- Eliminate any local control
- Change any current or future land use designation
- Pre-determine any future land use decision ahead of Planning Commission or City Council

Finally, the application the City submitted is consistent with the stated requirements by Bay Area Metro. Staff did have a call with Bay Area Metro staff on August 1st to clarify questions around the inclusion of ancillary commercial designated land and the drawing of boundaries.

On November 1, 2019, Bay Area Metro staff emailed staff (designated City representative listed on application) the next steps for the PPA which requires City to submit a City Council resolution nominating a new PPA.

Here is a link to an FAQ for the Pilot PPA program:
https://mtc.ca.gov/sites/default/files/PPA_FAQ.pdf

In addition, LAFCO has consistently told the City to look at converting industrial lands to residential and other uses rather than looking at annexation. It is thought that this may provide a level of protection against that argument, particularly when we start work on the new housing element.

Please let me know if you have any questions.

Regards,
Christina

Begin forwarded message:

From: Joe Baranowski <joe.b@mh-rgc.org>
Date: December 17, 2019 at 12:16:06 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, Laura Gonzalez-Escoto <laurage@msn.com>, Liam Downey <liam.downey@morganhill.ca.gov>, Joseph Mueller <joseph.mueller@morganhill.ca.gov>, Mohammad Habib <mohammad.habib@morganhill.ca.gov>, Juan Miguel Munoz Morris <Juan.MunozMorris@morganhill.ca.gov>, Wayne Tanda <wayne.tanda@morganhill.ca.gov>, Malisha Kumar <malisha.kumar@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Christina Turner <Christina.Turner@morganhill.ca.gov>, Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>, Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>, Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>, Donald Larkin <Donald.Larkin@morganhill.ca.gov>, John Lang <John.Lang@morganhill.ca.gov>
Cc: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Request removal of Agenda Item No. 8 from Consent Calendar for Dec 18, 2019 City Council Meeting

To City Council:

Per CP 97-01 I am writing to inform you that I object strongly to Agenda Item #8, "Approve Application to Bay Area Metro for a new Priority Production Area and a Modified Priority Development Area" being on the consent calendar and request that it be removed for comment and action. For reasons discussed below, I believe the proposed resolution needs to be modified, resubmitted to Bay Area Metro and brought to a future council meeting under a Public Hearing item.

In the short amount of time that I have become aware of this item (yesterday afternoon) I am also aware that many other people share my objections.

Per the staff report prepared by John Lang, it appears that at no time has the actions taken to designate certain areas as 'Priority Production Area' (PPA) been exposed to the public. The City submitted a Letter of Interest to the Bay Area Metro on August 30, 2019 and received notification from Bay Area Metro on November 1, 2019 that the proposed PPA met eligibility criteria.

I am not certain if either letter was ever included as an attachment to any public meeting or agenda item (or distributed

to the public in some other manner) but the staff report seems to indicate it was not prior to the scheduled December 18th, 2019 meeting when the Council is being asked to adopt a resolution designating a PPA for the City of Morgan Hill. (Prior City Council actions are noted in the staff report for a related item.)

The 'community engagement' section of the staff report notes that "this item is informational". Apparently that means there is no need to engage the community whatsoever?

The staff report notes that the intent of the City Council adopting a resolution is to have the PPA included in a Draft Blueprint to be considered by the Metropolitan Transportation Commission and Association of Bay Area Governments. While I admittedly do not have a complete understanding of the implications of the desired actions I object to the information that was submitted in the Letter of Interest - which is being communicated to our Bay Area neighboring governments as representative of Morgan Hill's development policies and goals.

Specifically,

1) The map of the proposed PPA area(s) show a significant number of parcels as being Zoned for Industrial Use when they currently are NOT.

The Letter of Interest does states that 'the 797 acres of land represented by the proposed Morgan Hill PPA, 84% of the land is designated for industrial use'. I have no idea if 16% of the designated areas are all of the parcels NOT currently zoned for Industrial Use or not but the map provided to Bay Area Metro is misleading. Why not just correctly mark the parcels currently Zoned for Industrial ?

2) The Letter of Interest was a form letter that asked: "Describe key industries envisioned for expansion in the PPA". The provided answer was: "The existing buildings and infrastructure support a range of light industrial uses. Manufacturing, particularly last mile production and distribution are well suited opportunities in Morgan Hill"

These two items do not represent what the public would support or at best is just the assumption of some people in City administration without any direct feedback from the Citizens.
The City has no right to represent decisions which would

require public approval as being fait accompli just in order to make the PPA proposal look better.

The map reflects an assumption made by the Planning Department, the Economic Development department and City Council that the redesignation of strategic Commercial properties to some type of Industrial Zoning, as has been started by the Trammell Crow request which is being supported based on a false narrative, is a foregone conclusion with the public having no input whatsoever. This is not right. Show the map based on facts not on the opinions of a small number of individuals.

The Letter of Interest notes that within the designated PPA zones there are medical device manufactures, telecommunication instruments/satellites manufactures and others and should have listed Advanced Composites, RF location and RFID manufactures, LIDAR and acoustics manufactures. Most residents would expect the City to select among these already established Morgan Hill industries those which have the best long term sustainable high quality job growth prospects and overall economic and community benefit when asked which are "key envisioned for expansion". Instead what was listed? "Last mile production and distribution."

So while Trammell Crow insists that Distribution is NOT even remotely possible as a targeted use for the proposed 'Technology Center' it seems everywhere we look we see concrete evidence that our City wishes to develop that EXACT 'industry'.

No wonder that even after two long Preliminary Design Review meetings on the Trammell Crow project the City Staff has been unwilling to answer 'What Is This Project' - a question asked by many members of the public and the PC.

What is clear is, that while unwilling to admit it directly and publicly, the Planning Department and other resources in the City Administration have been given directions to establish Distribution as a "key industry envisioned" for Morgan Hill. It's no surprise that there has been NO attempt to draft a cohesive Master Plan that would define "Advanced Manufacturing" as a new Zoning District - as other city's have done as that is not, and never was, the intent. Just throw out some non-binding drawings and obfuscate the real issues until it's time to have the PC vote when there will be mass confusion and 3-minutes or less to address. For reasons known only to a few, Morgan Hill city staff want our town to become known as a Distribution Hub.

THAT has been advertised to many groups, including the Bay Area Metro, but not the Citizens of Morgan Hill.

The PPA proposal should be modified:

- 1) Submit maps which represent parcels currently Zoned for Industrial and do not include Commercial parcels that someone thinks should be rezoned in the future.
- 2) Restate what the 'key industries envisioned for expansion in the PPA' are based on Public input !!

Regards,

Joe Baranowski

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A presentation to the Morgan Hill City Council

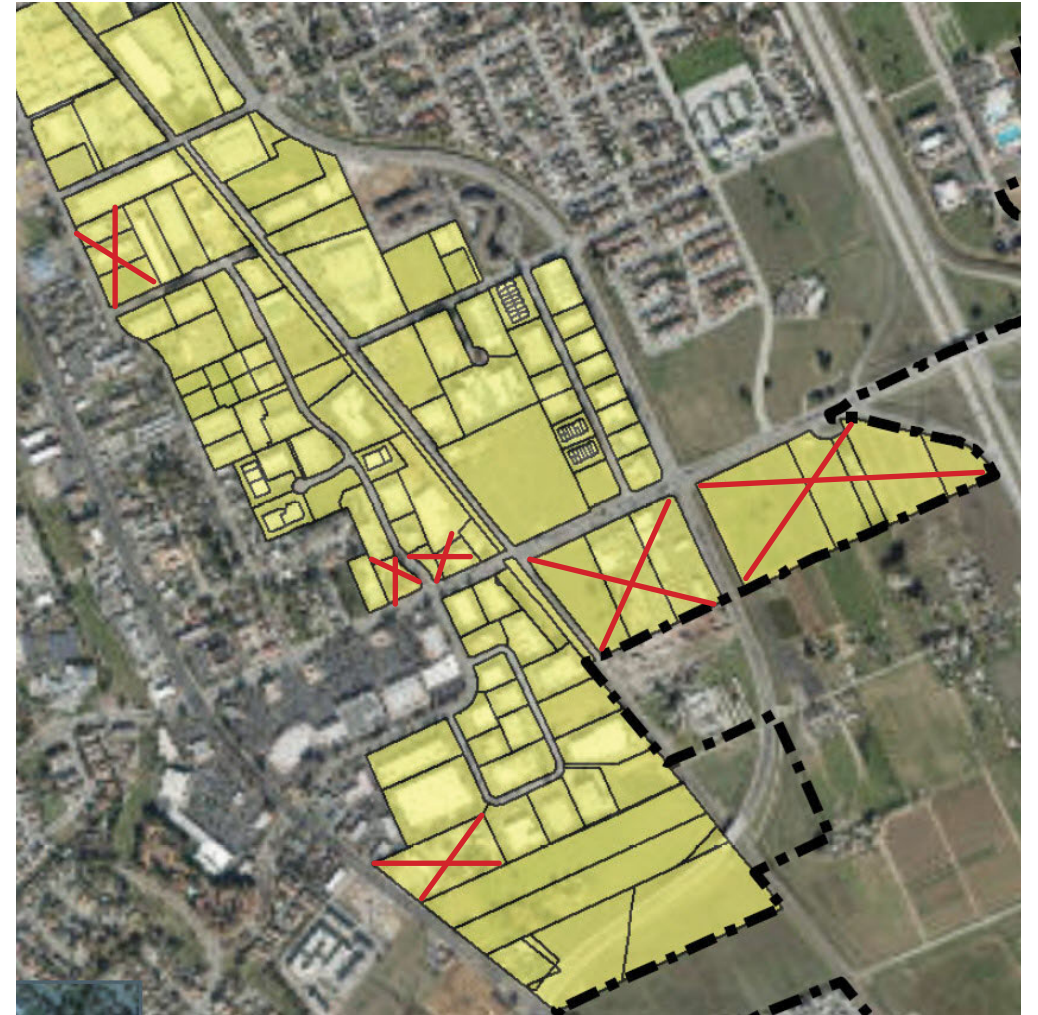
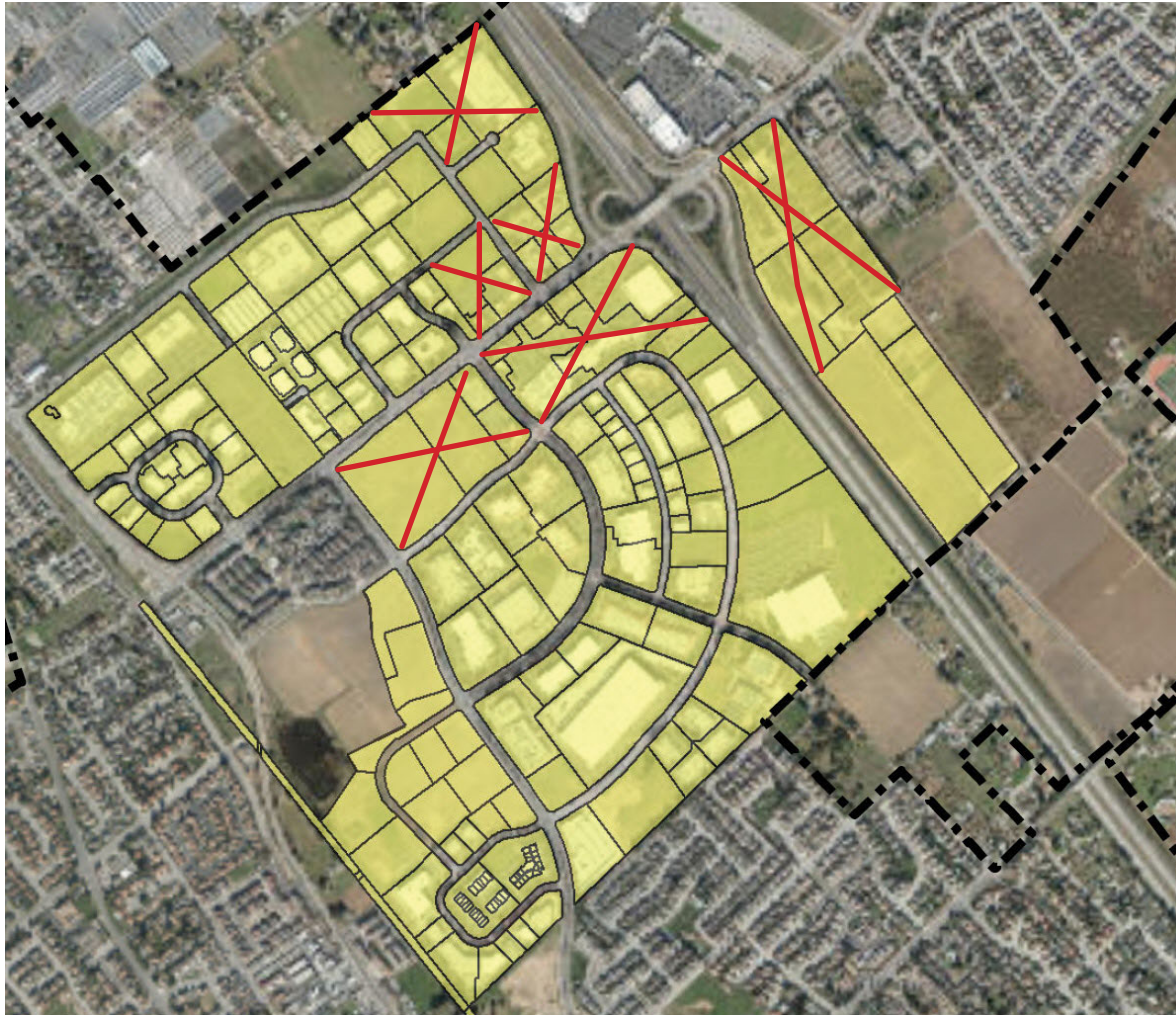
December 18, 2019
Joe Baranowski

Agenda Item #8 : “Approve Application to Bay Area Metro for a new Priority Production Area and a

Conversion of strategic Commercial property? Designating Last Mile Distribution as ‘key’ industry for expansion in a **797 acre** ‘priority’ area? What is real focus of PPA program? Consistent with MH General Plan? Engage Morgan Hill ??



Zoned for Industrial use? NOT crossed out parcels.



Why is City showing parcels Zoned for Industrial use when they aren't? Submit factual, accurate maps to Bay Area Metro.

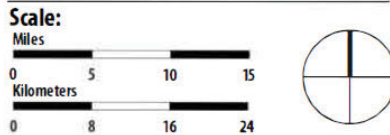
Why low participation (unlike PDA program) ?



Draft 2019 Regional Growth Framework Update Priority Production Areas (PPAs)

 Proposed Priority Production Areas (PPAs)*

**Does not include submissions which did not meet eligibility criteria.*



Source: MTC; TomTom North America, January 2016

Map Author: JC, October 22, 2019

File Location: <https://mtcdrive.box.com/s/37oi8htb8ljxmdorqh-4qv3d035r0js>



- Only 3 cities in Santa Clara County participating
- Main reason - expectation of getting funding of some sort
- Program explicitly for areas NOT near public transit
- Focus on so-called 'PDR' - production, distribution and repair and real emphasis appears to be on Distribution (see next page for examples)
- Distribution focus consistent with designated areas AND City of Morgan Hill's application (probably explains why)
- PPA Policy goals are vague and unproven
- Anyone who thinks there are enough state and/or federal dollars to improve 101 South Valley corridor enough to make Morgan Hill a viable 'distribution hub' without making a bad problem much worse should produce a comprehensive study with specific, concrete action plan before promoting such a plan !
- Have reasons for NOT participating (see next page) been considered?
- What happened to 'Advanced Manufacturing' ?
- How is this consistent with General Plan Commercial/Industrial designation and goals?

All of these issues and questions might turn out to show that participating in the PPA program is a great idea BUT this needs a LOT more thought, explanation, and PUBLIC INPUT before City Council should even be considering formal adoption. Engage Morgan Hill ??

San Mateo	Pacifica	Northern Palmetto PPA
Santa Clara	Milpitas	Central Manufacturing Area
Santa Clara	Milpitas	McCarthy Ranch Industrial Area
Santa Clara	Milpitas	Southwestern Employment Area
Santa Clara	Morgan Hill	Morgan Hill PPA
Santa Clara	San Jose	Monterey Business Corridor
Solano	Benicia	Benicia Industrial PPA



What is focus of PPA program and what are policy goals ?

Reasons for wanting a PPA program [1]

- **Funding:** Primary attractor of the PPA program even though funding availability is not clear
- **Focus on employment:** OK but focus solely on 'PDR' - production, distribution and repair and emphasis on Distribution.
 - » As illustration of 'best practices' sites San Leandro modifying business license fees to attract warehouse, wholesale, and distribution businesses even while recognizing that “warehouse and distribution businesses cause heavy wear on local streets through truck and delivery traffic, but generate relatively few jobs and limited business license revenue or sales tax” !??
 - » “The PPA would create a platform that could be leveraged to achieve larger policy outcomes. This larger effect could be brought to the state or federal level to advocate for infrastructure dollars on the basis that the region is recognized as a distribution hub”.
- **Toolbox of best practices, elevate the profile of industrial land, value of regional framework**

Reasons for NOT wanting a PPA program [1]

- **Locked into Industrial:** “PPA program could lock city into uses that may not be beneficial for city in the future.”
- **Duplication of existing Industrial zoning or protection:** “Why another layer that will complicate existing mechanisms? What is real added-value of PPA program? “
- **Political misuse:** Noted “occasional misuse of PDAs at local level that favor a politician’s career rather than the community at stake.”



Item # 18

AGENDA DATE: 12/18/19
SUPPLEMENT # 1

A presentation to the Morgan Hill City Council

Dec 18, 2019

Joe Baranowski

Two separate items re. Agenda Item #18 - “Rescind Ordinance No. 2131”

- a) Industrial and Warehousing & Distribution are not permitted uses
- b) Given huge amount of taxpayer money spent to get here, worthwhile to remind residents that what court said is reason to be optimistic - even when elected officials are not listening, e.g. Shoe Palace & Trammell Crow.



Staff report on 2131 omits two important words**

Rather than continue litigating the case, staff now recommends that the City Council rescind Ordinance No. 2131 N.S. This will prohibit the site from being rezoned to commercial for a period of one year but will allow the property to be developed as industrial if that is preferable to the property owner.

Permitted uses under the current zoning include:

- Adult businesses,
- Business support services,
- Vehicle repair and maintenance,
- Wholesaling,
- Construction and material yards,
- Food and beverage production,
- Manufacturing, **Light**
- Plant nurseries,
- Professional offices,
- Research and development,
- Warehousing and distribution, **Small***
- Fleet services.

Other industrial uses may be permitted with a use permit, including:

- Colleges and trade schools,
- Community assembly,
- Animal boarding and/or veterinary services,
- Commercial recreation,

***Small is less than 75,000 square feet**

****yes, there is a note that says see zoning code for more detailed information**



CA Supreme Court City of Morgan Hill vs Bushey *

- *California's legislative power is vested in its Legislature. But the people have "reserved to themselves the powers of initiative and referendum."*
- *Our duty is to " 'jealously guard' " the referendum and initiative powers, and to liberally construe those powers so that they " 'be not improperly annulled.' "*
- *We resolve doubts about the scope of the initiative power in its favor whenever possible, and we narrowly construe provisions that would burden or limit the exercise of that power*
- *People in counties and cities may also use their referendum and initiative powers to alter local government policy*
 - » Not just specific (e.g. land use / zoning) issues but policy & process ! Grassroots movement across CA for 'Open Source Imitative Logistics' - reduce cost of initiative, including recognizing the cost of qualifying 5 (for example) vs 1 at same time is not linear . (See <https://californiapolicycenter.org/local-and-state-initiatives-the-future-of-policy-in-california/> and what Oxnard activists are doing to make dramatic changes in one election) MHRGC going up the learning curve quickly.
 - » Example: if MH CC will not initiate policy changes to prevent another Shoe Place the Citizens will
- *We will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors . . . are subject to initiative and referendum*

*Note: text in *italics* is from California Supreme Court S243042, filed 8/23/18, concurring opinion written by Associate Justice Mariano-Florentino Cuéllar





Item # 19
AGENDA DATE: 12/18/19
PRESENTATION

GPA2019-006

Lightpost

General Plan Amendment



December 18, 2019

Lightpost GPA



Project:

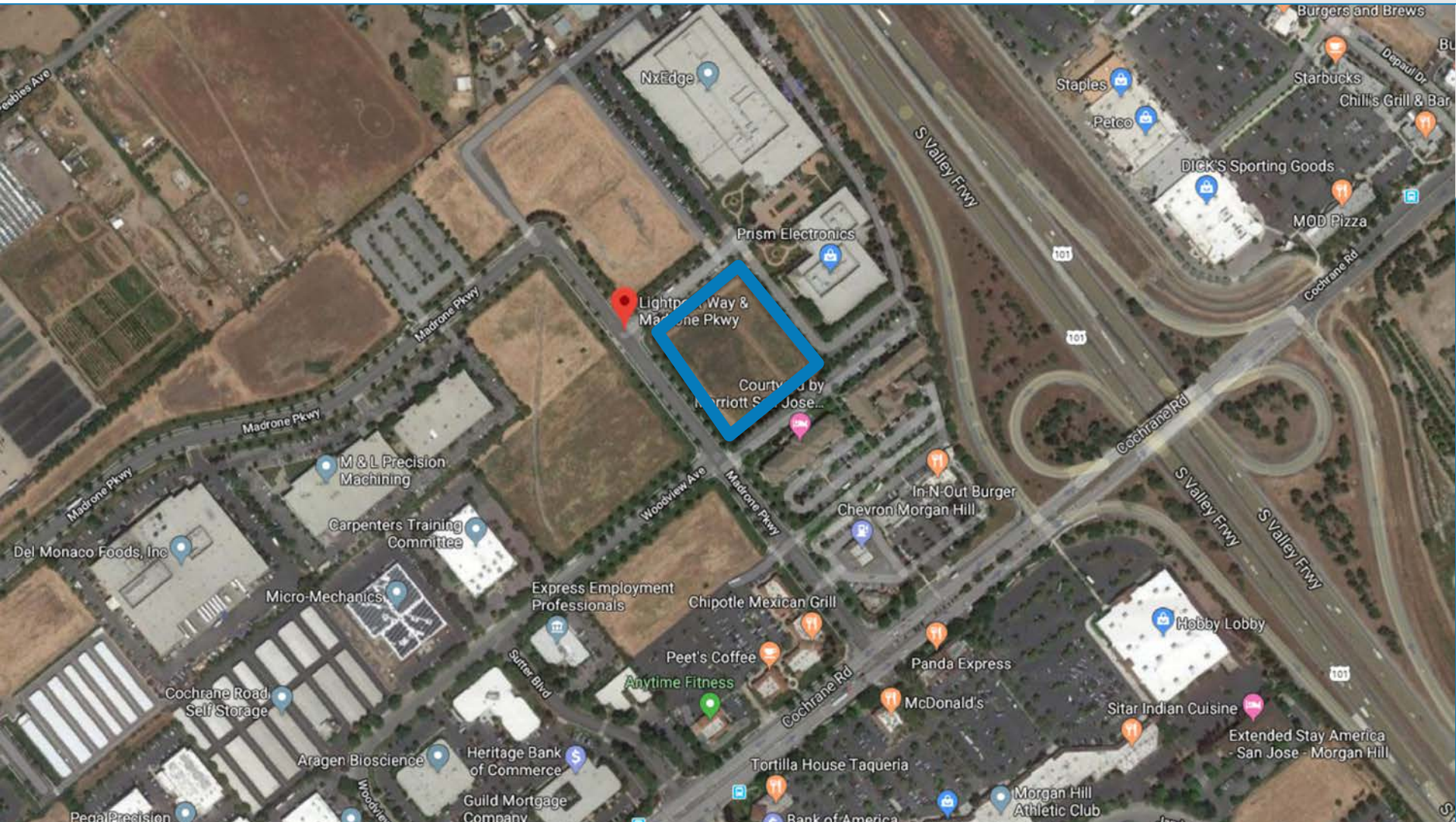
General Plan Amendment GPA2019-006 to amend the General Plan from Commercial to Commercial/Industrial at the Corner of Lightpost Way and Madrone Parkway (APN 726-33-026)

Request:

Adopt Resolution approving the General Plan Amendment

Location:

Southeast corner of Madrone Parkway and Lightpost



Background:

- November 2014 City Council approved GPA from Industrial to Commercial
- 2015 City Council adopted Ordinance amending zoning from ML (Light Industrial) to CG (General Commercial)

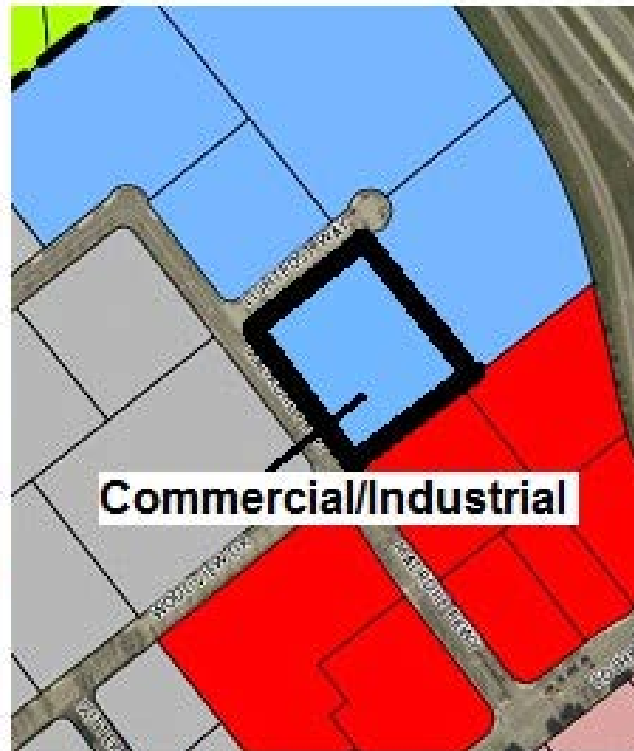
Referendum:

- Rezone challenged by referendum
- City filed petition in Superior Court
- Court held referendum was invalid
- Referendum proponents appealed
- Sixth District Court of Appeals disagreed with Trial Court

Existing/Proposed General Plan Designation



EXISTING



PROPOSED

Recommendation

1. Open/close public hearing
2. Adopt Resolution approving the General Plan Amendment

Questions?





RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS (MISC2019-0009)



December 18, 2019

Design and Development Standards



SB 330 impacts on the City of Morgan Hill:

- Changes local approval process and the Permit Streamlining Act until January 1, 2025
- Prohibits the City of Morgan Hill from controlling growth through the City's RDCS program
- Unable to guide project design with the RDCS Competition Manual

Design and Development Standards



Request:

Adopt a Resolution approving the Residential Development Design and Development Standards.

Purpose:

- Respond to requirements of SB 330
- Replace the RDCS Competition Manual
- Provide objective standards for high quality, residential projects that are aesthetically pleasing, livable sustainable and well connected to neighborhood services

Design and Development Standards



Objective Standard Defined

Standards that involve no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official

Yes or No answers – “Does it conform”

Design and Development Standards



Planning Commission Review

- Workshop held on November 12, 2019
- Public hearing held on November 18, 2019
- Reviewed section by section and recommended approval with amendments

Design and Development Standards



Recommendation

1. Open/close public hearing; and
2. Adopt a Resolution approving the Residential Development Design and Development Standards

Questions?



DIVIDEND HOMES, INC.
385 WOODVIEW AVE., SUITE 100
MORGAN HILL, CA 95037
408-497-6828
"roliver@dividendhomes.com"

December 17, 2019

Don Larkin, City Attorney
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

(sent by email)

Re: City Council Agenda Item #20 – (SB330-Government Code Section 65589.5)

Dear Mr. Larkin:

We respectfully request two modifications to the "Check List" forwarded to the City Council by the Planning Commission, as follows:

1. Packet Pg 527: **Roof line Variation:** add the following line: **"except where necessary to provide adequate solar zone areas as required by the 2019 California Building Energy Efficiency Standards"**
2. Packet Pg 521 – 522: **Agricultural Buffer:** omit the following sentence: **"The size and configuration of the buffer is a minimum of 100 feet between the active agricultural use and the nearest new structure as measured from the property line."**

Basis for request #2: It violates the restrictions set forth in SB330 Government Code Section 65589.5 Sub Section 66300 (b)(1)(A), disallowing the City from making any changes, after January 1, 2018, that create "less intensive use," resulting from "new or increased setback requirements."

The defining of an agricultural buffer with a required dimension (e.g. 100'), to my knowledge, does not appear in the General Plan or Zoning Code prior to January 1, 2018 (or now). Both our (through related entities) 2019 Measure S projects (RDCS2019-005 and RDCS2019-006) border possible agricultural lands. Both projects scored the necessary Measure S points to compete. Neither project had a 100' Agricultural Buffer. Neither project lost points for not having a 100' buffer. No mention, in any of the competition hearings, was made regarding the necessity of having a specified distance (eg. 100') for the Agricultural Buffer. The imposition of a minimum 100' Agricultural Buffer will result in a loss of dwelling units in both projects in order to comply with the proposed new SB330 Check List before the City Council for approval tomorrow evening. That would result in a "less intensive use" for both projects, which would be in violation of the provisions of SB 330.

Respectfully submitted.

Dividend Homes, Inc.



By: Richard B. Oliver, VP

From: [Chris Ghione](#)
To: [Michelle Bigelow](#)
Cc: [Christina Turner](#)
Subject: Supplemental Item - Parks and Recreation Commission Recommendation for Item 23
Date: Wednesday, December 18, 2019 6:23:30 AM

Michelle,

Last night, at their December 17, 2019 meeting, the Parks and Recreation Commission reviewed the potential purchase of sports facility land which is to be reviewed under item 23 on tonight's Council Agenda. By a 6-0 vote the Commission concurred with City staff's recommendation on purchasing the property.

Thank you,

Chris

Chris Ghione
Public Services Director
[Engage With Us!](#)

City of Morgan Hill
Community Services, Engineering and Utilities
17575 Peak Avenue, Morgan Hill, California, USA 95037

P: 408.782.9154 | **C:** 408.427.6196
chris.ghione@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

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Wednesday, December 17, 2019

Mayor Rich Constantine and City Council Members
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

Re: Agenda Items 23 – Sports Facility Land Acquisition

Dear Mayor Constantine and Council Members,

Committee for Green Foothills appreciated the Council's February 6, 2019 direction to staff to land bank the Ball Field Property and seek alternate Ball field site development options. In our February 6, 2019 letter to Council on this issue, we strongly encouraged this direction and to work with your regional partners (County of Santa Clara, LAFCO, Santa Clara Valley Open Space Authority, Land Trust of Santa Clara Valley) on the future use of the Ball Field and Recreation properties in the context of your agricultural strategy. We urged you to prioritize holding these discussions and/or a comprehensive study session/workshop (or set of workshops) *before* providing any further direction of future uses on a parcel by parcel basis of properties located in the Southeast Quadrant (SEQ)¹.

We advocated for these actions as they are the responsible steps the City should take to ensure a holistic and optimal approach to attain the City's stated goal of agricultural preservation and viability for this area in the long-term. The alternative is a piecemeal approach of parcel by parcel decision making that would hinder this stated goal.

Pattern of Purchasing Lands Under County Jurisdiction Within SEQ for Urban Development

While we support the City's efforts to find an alternate Ballfield site, the recommendation of a site within the SEQ directly adjacent to the current Ball Field property raises many questions. Should the City move forward with the purchase of the 3.85 acre Grestoni property, it will be

¹ On page CNF-18 of the City's General Plan - accessible on the City website - this area is referred to as the Southeast Quadrant.

the third purchase of lands under the County's jurisdiction in the SEQ by the City that the City has indicated it will develop with City public facilities², hence urban uses.

Absent any action by Council to amend (contract) the current Urban Growth Boundary that the Council adopted for the Southeast Quadrant area outside of the 2035 General Plan update process only reinforces the City's intent to eventually develop lands within this area with urban uses. This could fuel the speculative development values of land in this area, continue to place incompatible uses adjacent to farmland within a designated agricultural resource area, and deter interest in the willingness of landowners to consider selling their lands for agricultural preservation or to encumber their lands with an agricultural conservation easement.

One of the attachments to the February 6, 2019 City Council Staff Report on the Sports Field Development Process was an *Update on Agricultural Preservation Strategy and potential related land use considerations* which stated that 58% of the agricultural land lost in the past two decades has been due to rural development in the County – not urban expansion. Yet with the purchases of these agricultural lands under the County's jurisdiction for development purposes, the City continues to contribute to this conversion statistic. The City's future intention to request an Urban Service Area amendment for these lands is unclear.

Lack of Clarity On A Viable and Comprehensive Agricultural Strategy

It should be noted that the state agriculture designation of the Grestoni property as grazing land is not indicative of the soils that comprise that parcel (or the adjacent parcel to the east that may also come under consideration by the City for purchase). The County Planning Office's Interactive Property Profile Map indicates that the majority of the Grestoni property (and the entire adjacent property to the east as well as the "Recreation" property purchased by the City directly to the north of this parcel) is comprised of prime farmland soils.

Therefore, paramount among the questions we have is what is the City's agricultural strategy for the SEQ (also referred to by the City as an Agricultural Priority Conservation Area)? How does the City's purported agricultural strategy align with the objectives and strategies of the County's Santa Clara Valley Agricultural Plan? How will continuing to purchase properties for development without a clear and comprehensive conservation strategy that aligns well with the Valley Agricultural Plan advance agricultural preservation and viability long-term in this

² The other two properties in addition to the Grestoni property are: the 25.8 acre Ball Field property south of the intersection of Condit Road and Tennant Avenue, adjacent to Highway 101; and the 10 acre "Recreation" property on the southwest corner of Murphy Avenue and Barrett Avenue.

agricultural resource area? What is the City's intention as to the future use of the current 25.8 acre Ball Field property, especially if the City purchases the Grestoni property and potentially the adjacent property to the east?

The *Update on Agricultural Preservation Strategy and potential related land use considerations* noted earlier states:

A scenario may be possible where a smaller land acquisition tied with a shared-use agreement with the Saint John XXIII College Preparatory High School involving lands currently proposed to be annexed to the City could meet the needs of the community for ball fields. It should also be noted that the existing Ball Field site provides buy back rights to the former property owner for a small portion of the site for future commercial use if eventually annexed, which would need to be addressed. The freeway adjacency for this commercial along with the sports tourism benefits of another large recreation facility could provide future economic development benefits that may not be obtained if the site is converted.

So, it remains unclear as to what the City's overall intent is for the SEQ especially as it relates to agricultural preservation and long-term viability.

Again, we urge the Council to clarify its intent for this area and reexamine the City's agricultural strategy together its regional partners. Such discussions could help augment the City's partnership with these entities, your agricultural preservation endeavors, and your efforts to reduce greenhouse gas emissions in the face of climate change.

Thank you for your consideration of these comments.

Sincerely,



Julie Hutcheson, Director of Impact

cc: Jacqueline Onciano, Director of Planning and Development, County of Santa Clara
Andrea Mackenzie, General Manager, Santa Clara Valley Open Space Authority
Greg Leonard, Executive Director, Land Trust of Santa Clara Valley
Neelima Palacherla, Executive Officer, Santa Clara County LAFCO



Mayor Rich Constantine and City Council Members
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

December 18, 2019

Re: Sports Facility Land Acquisition

Dear Mayor Constantine and Council Members,

Thank you for the opportunity to comment on the proposed Sports Field Land Acquisition within Morgan Hill's Priority Agricultural Conservation Area. We support the City's decision in February of this year to land bank the "Ball Field Property" and to continue to lease the land for agricultural purposes. However, to understand the implications of the proposed Sports Field Land Acquisition, we request additional information from the City on where it intends to permanently conserve agricultural land, especially to mitigate for conversion of agricultural land within its own Priority Agricultural Conservation Area. The City's continued efforts to acquire land within its Priority Agricultural Conservation Area for non-agricultural purposes sends conflicting messages to landowners and regional entities as to where the City's priorities lie - making it challenging to coordinate on how to ensure the long-term viability of agriculture in the region.

While the California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP) classifies the proposed Sports Field Land Acquisition as Grazing Land, it consists of prime farmland soils as defined by the Natural Resources Conservation Service and would be recognized by FMMP as Prime Farmland if it were to be brought back into cultivation. Lands elsewhere in the County previously identified by FMMP as grazing land are currently recognized as Prime Farmland. In fact, there is growing recognition at the state level (notably Senate Bill 732 (2018) "General plan: agricultural land") that farmland soil characteristics should also be considered when setting goals for protection of agricultural lands.

We cannot support the proposed Sports Field Land Acquisition based on the information provided in the staff report. Conversion of agricultural lands for non-agricultural purposes, and any potentially necessary expansion of an urban service area would directly and indirectly impact the viability of agriculture in the City's Priority Agricultural Conservation Area.

33 Las Colinas Lane
San Jose, CA 95119
408.224.7476 T
408.224.7548 F
openspaceauthority.org



We respectfully request that the City meet with County and Authority staff to provide an update on its agricultural mitigation strategy, needs, and progress toward its “stay-ahead” provision in the Agricultural Lands Preservation Program; where it intends to permanently conserve agricultural land; and how it will coordinate with regional partners to ensure the long-term viability of agriculture its Priority Agricultural Conservation Area.

Sincerely,

A handwritten signature in black ink that reads "Andrea Mackenzie". The signature is fluid and cursive, with a long, sweeping underline.

Andrea Mackenzie
General Manager

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org

Item # 23
AGENDA DATE: 12/18/19
SUPPLEMENT # 4



December 18, 2019

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Subject: Morgan Hill City Council Mtg. Agenda Item No. 23 – Sports Facility Land Acquisition.

Dear Mayor Constantine and Members of the Morgan Hill City Council:

On behalf of the County of Santa Clara Department of Planning and Development, we are contacting you regarding Agenda Item No. 23 on your agenda regarding a Sports Facility Land Acquisition for property on Condit Road, located outside of the jurisdiction of Morgan Hill, within the rural unincorporated County.

On Monday, December 16, 2019, Morgan Hill staff met with County staff to discuss a land acquisition. In accordance with Government Code Section 65402, we look forward to a formal consultation.

Kind regards,

A handwritten signature in blue ink that reads "Jacqueline R. Onciano".

Jacqueline R. Onciano
Director, Department of Planning and Development



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, December 18, 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

STUDENTS - THE CLOSED SESSION THAT STARTS AT 6:00 PM IS NOT OPEN TO THE PUBLIC. THE REGULAR MEETINGS STARTS AT 7:00 P.M.

SPECIAL MEETING

6:00 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation under Government Code Section 54956.9(b)

Two Cases

REAL PROPERTY NEGOTIATIONS

Pursuant to:	Government Code Section 54956.8
Property:	APN 81713011
Negotiating Parties:	Public Services Director, City Manager
Property Owner:	Sergi, James P Trustee & ET AL
Under Negotiation:	Price and Terms of Payment

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

PRESENTATIONS

YAC PRESENTATION - ASSET #39 SENSE OF PURPOSE

WINERIES OF SANTA CLARA VALLEY PRESENTATION - GEOFF MACE, STACY GIANNINI
& GENA GUGLIELMO

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **APPROVE THIRD AMENDMENT TO SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MARK THOMAS & COMPANY FOR THE HALE AVENUE EXTENSION PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer the Third Amendment to Service Agreement for Design Professionals with Mark Thomas & Company for additional scope of services for the Hale Avenue Extension Project for an additional \$99,600, for a total not to exceed amount of \$683,033.

2. **APPROVE SECOND AMENDMENT FOR SERVICE AGREEMENT FOR DESIGN PROFESSIONALS WITH MOTT MACDONALD FOR THE TENNANT AVENUE SEWER PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer a Second Amendment, extending the term, for Services Agreement for Design Professionals with Mott MacDonald, Inc. for the Tennant Avenue Sewer Upgrade Project.

3. **APPROVE THIRD AMENDMENT TO AGREEMENT WITH DAVID J. POWERS & ASSOCIATES TO REVIEW AND PROVIDE COMMENTS ON THE HIGH SPEED RAIL PROJECT**

Recommendation:

Approve and authorize the City Manager to execute and administer the Third Amendment to Agreement with David J. Powers & Associates for technical support services related to environmental review of the High Speed Rail project, extending the Term of Agreement until December 31, 2020.

4. APPROVE FOURTH AMENDMENT FOR DESIGN SERVICES AGREEMENT WITH SCHAAF & WHEELER FOR THE SEWER LIFT STATION IMPROVEMENTS PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a Fourth Amendment to Service Agreement for Design Professionals with Schaaf & Wheeler Consulting Engineers to provide additional services for the Lift Station Improvements extending the term of the contract for one year.

5. APPROVE SERVICE AGREEMENT FOR DESIGN PROFESSIONALS FOR COMPACTION TESTING AND SPECIAL INSPECTION

Recommendation:

Approve and authorize the City Manager to execute and administer agreements with Engeo, Inc. in the amount of \$350,000 and Construction Testing Services, Inc. in the amount of \$150,000 for compaction testing and special inspection services for various capital improvement projects.

6. APPROVE PROFESSIONAL SERVICES AGREEMENT WITH NELSON\NYGAARD CONSULTING ASSOCIATES, INC. TO ASSIST WITH CITY'S IMPLEMENTATION OF STATE SENATE BILL 743 (TRANSITION FROM LEVEL-OF-SERVICE (LOS) TO VEHICLE-MILES-TRAVELED (VMT) METRIC FOR TRANSPORTATION ANALYSIS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA))

Recommendation:

Approve and authorize the City Manager to execute and administer the professional services agreement with Nelson\Nygaard Consulting Associates, Inc. for assistance with City's implementation of State Senate Bill 743 (SB 743) for a total not-to-exceed amount of \$110,000.

7. APPROVE TWO YEAR PROPERTY LEASE AGREEMENT WITH ADVENT GROUP MINISTRIES AT 535 ALKIRE STREET

Recommendation:

Approve and authorize the City Manager to execute and administer a lease agreement with Advent Group Ministries for the property located at 535 Alkire Street, Suite 150 (also known as The Villas) for the Advent Step Up Program.

8. APPROVE APPLICATION TO BAY AREA METRO FOR A NEW PRIORITY PRODUCTION AREA AND A MODIFIED PRIORITY DEVELOPMENT AREA

Recommendation:

1. Adopt resolution designating two industrial areas as illustrated in Exhibit 1 of the Resolution as a Priority Production Area (PPA) for the City of Morgan Hill;
2. Adopt resolution expanding the City of Morgan Hill's existing Priority Development Area (PDA) beyond Downtown as illustrated in Exhibit 1 of the Resolution; and
3. Authorize the City Manager to take all necessary ministerial actions to complete the PPA and or PDA application process and implement the provisions of the Resolution.

9. APPROVE PLANS EXAMINER AND PLAN CHECK ENGINEER CLASSIFICATIONS, AND REVISED AFSCME AND PART-TIME TEMPORARY AND SEASONAL EMPLOYEES SALARY SCHEDULES

Recommendation:

1. Approve the Part-Time Temporary and Seasonal Employees Salary Schedule;
2. Approve the Plans Examiner and Plan Check Engineer classifications and updated American Federation of State, County and Municipal Employees (AFSCME) salary schedule; and
3. Adopt resolution amending the adopted Fiscal Year 2019-20 budget to appropriate \$100,139 from the Development Services Fund (206) for the personnel related expenditures.

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

Recommendation:

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

11. AWARD CITY FACILITY FIBER NETWORK INFRASTRUCTURE PROJECT

Recommendation:

1. Approve City Facility Fiber Network Infrastructure Project plans and specifications;
2. Award contract to Elco Electric, Inc. for the City Facility Fiber Network Infrastructure Project in the amount of \$160,589;
3. Authorize expenditure of construction contingency funds not to exceed \$32,118; and
4. Authorize the City Manager to execute and administer the construction contract with Elco Electric, Inc.

12. ADOPT ORDINANCE 2308 NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING MAP AMENDMENT ZA2019-0006 FOR AN RDM-7,000/PLANNED DEVELOPMENT COMBINING DISTRICT AND PLANNED DEVELOPMENT MASTER PLAN FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANA LEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002)

Recommendation:

Waive the reading, adopt Ordinance No. 2308, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

13. ADOPT ORDINANCE 2309 NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT DA2018-0003: DIANA-MANA HANA LEI (MONTECITO ESTATES) FOR A 24-LOT RESIDENTIAL SUBDIVISION ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF DIANA AVENUE AND LOTUS WAY (APN 726-09-001 & 726-09-002)

Recommendation:

Waive the reading, adopt Ordinance No. 2309, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

14. ADOPT ORDINANCE 2310 AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

Recommendation:

Waive the reading, adopt Ordinance No. 2310, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

15. ADOPT ORDINANCE 2311 NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.64 ("TOBACCO RETAILER'S LICENSE") OF TITLE 5 ("BUSINESS LICENSES GENERALLY") OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING TOBACCO RETAILER'S LICENSE

Recommendation:

Waive the reading, adopt Ordinance No. 2311, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

16. ADOPT ORDINANCE 2312, NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE TRANSFER OF 11 ALLOTMENTS FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT AND A DEVELOPMENT AGREEMENT AMENDMENT AAE2019-0010 (DAA2018-0002): E. DUNNE-YOUNG (ANDALUSIA) TO INCORPORATE 26 BUILDING ALLOTMENTS INTO THE APPROVED DEVELOPMENT AGREEMENT FOR THE 46-UNIT ANDALUSIA DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

Recommendation:

Waive the reading, adopt Ordinance No. 2312, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

17. ADOPT ORDINANCE 2313, NEW SERIES AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.84 (ACCESSORY DWELLING UNITS) AND SECTION 18.124.020 (RESIDENTIAL LAND USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

Recommendation:

Waive the reading, adopt Ordinance No. 2313, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

PUBLIC HEARING

18. RESCIND ORDINANCE NO. 2131 NEW SERIES IN RESPONSE TO REFERENDUM CHALLENGING ZONING AMENDMENT FOR A PARCEL LOCATED ON THE NORTHEAST CORNER OF MADRONE PARKWAY AND LIGHTPOST WAY (APN 726-33-026)

Recommendation:

Rescind Ordinance No. 2131 in response to the referendum petition submitted by the Morgan Hill Hotel Coalition.

Estimated Time: 5 Minutes

19. ADOPT RESOLUTION AMENDING THE GENERAL PLAN LAND-USE DESIGNATION ON THE PARCEL LOCATED AT THE SOUTH-EAST CORNER OF LIGHTPOST WAY AND MADRONE PARKWAY. (APN 726-33-026) FROM COMMERCIAL TO COMMERCIAL/INDUSTRIAL

Recommendation:

1. Open/close public hearing; and
2. Adopt Resolution approving an amendment to the General Plan land-use designation.

Estimated Time: 5 Minutes

20. ADOPT RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS (MISC2019-0009) THAT RESPOND TO THE REQUIREMENT OF SB330-GOVERNMENT CODE SECTION 65589.5

Recommendation:

1. Open/close public hearing; and
2. Adopt Resolution approving the Residential Development Design and Development Standards.

Estimated Time: 30 Minutes

OTHER BUSINESS

21. ACCEPT SEPTEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

22. INTRODUCE ORDINANCE AMENDING CHAPTER 17.28 OF THE MORGAN HILL MUNICIPAL CODE REGARDING PARKLAND DEDICATION AND/OR IN LIEU FEES FOR NEW SUBDIVISIONS

Recommendation:

1. Waive the first and second reading of the Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update the City's Park Dedication Ordinance; and
2. Introduce Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update park dedication requirements.

Estimated Time: 15 Minutes

23. SPORTS FACILITY LAND ACQUISITION

Recommendation:

1. Adopt resolution amending the adopted Fiscal Year (FY) 2019-20 budget to appropriate \$1,250,000 from the Park Impact Fund (301) for the purchase of property and associated costs;
2. Authorize the City Manager to execute a purchase agreement with Angelo Grestoni for the purchase of 3.85 acres of property (APN 817-13-008) for \$1,199,000;
3. Authorize the City Manager to execute a certificate of acceptance for the property; and
4. Authorize the City Manager to execute all documents, agreements, and payments necessary to complete the purchase of the property.

Estimated Time: 30 Minutes

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

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01;
3. Review and approve the City Council Appointments to Outside Agencies; and
4. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

Estimated Time: 10 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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



December 18, 2019



OUR DREAMS, YOUR WINES



ROOTED IN SILICON VALLEY



Wineries of Santa Clara Valley—Who Are We?



Any bonded winery that either:

1) has a permanent public tasting facility in Santa Clara County or within the Santa Clara Valley AVA,

or

2) produces a Santa Clara Valley designated wine

Wineries of Santa Clara Valley—Our History

The history of winemaking and viticulture in the Santa Clara Valley goes back to the 18th Century.



Wineries of Santa Clara Valley—Our History

- o March 28th, 1989 the Santa Clara Valley AVA was finally declared.
- o Today we have 34 winery members, with 3 new ones this year.



Winery Members

Alara


CREEKVIEW
Vineyards


HELLER
WINERY

MARTIN RANCH
WINERY

satori

AYER *V* FAMILY
VINEYARDS
Where Friends Become Family

 DORCICH
FAMILY VINEYARDS

J WINSTON
WINERY


MIRAMAR VINEYARDS

TANK HOUSE


WINERY

Calerrain


VALLÉE
VINEYARDS
MORGAN HILL, CA

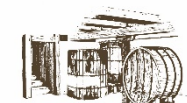
 JASON
STEPHENS
WINERY

MORGAN HILL
CELLARS
ESTABLISHED 1913


SOLIS WINERY
Santa Clara Valley

CASA de FRUTA[®]
Celebrating 100 Years 

Fernwood
CELLARS
ESTATE GROWN


Kirgin Cellars

Rapazzini
Winery
since 1962

Stefania Wine


CHURCH CREEK
CELLARS

Fortino
WINERY

La Vie  Dansante
WINES

Sarah's
VINEYARD

P & V



Winery


CLOS LACHANCE
VINEYARDS

GUGLIELMO WINERY
MORGAN HILL, CALIFORNIA
EST. 1925


LION RANCH
VINEYARDS & WINERY

CINNABAR
WINERY

Sycamore Creek
VINEYARDS

COOPER-GARROD
Estate Vineyards



What Makes Us Different?

- Large Family Heritage Wineries and Small Boutique Wineries
- Owners are also the Winemakers, Vineyard Managers and General Managers who will pour you a glass of wine
- All looking to combine food, wine and love for entertaining others with their favorite wine varietals

WSCV Around Town

- o Morgan Hill Wine Stroll
- o Taste of Morgan Hill
- o Mushroom Festival
- o Gilroy Garlic Festival
- o Gilroy Art and Wine Stroll
- o Gilroy Education Foundation Annual Event
- o Chamber Mixers

Many, many donations throughout the year

Annual Trail Pass

- Passport will be replaced with our new ANNUAL Trail Pass
- **Wine Trail Days-** The first Saturday of February, August and November.
- **GOAL:** Help more visitors discover the Wine Trail from outside of the South County Region.



Thank You!



- Expansion of the wine trail signage
- Continuing support in gov't issued newspapers, newsletters, emails, social media, and other

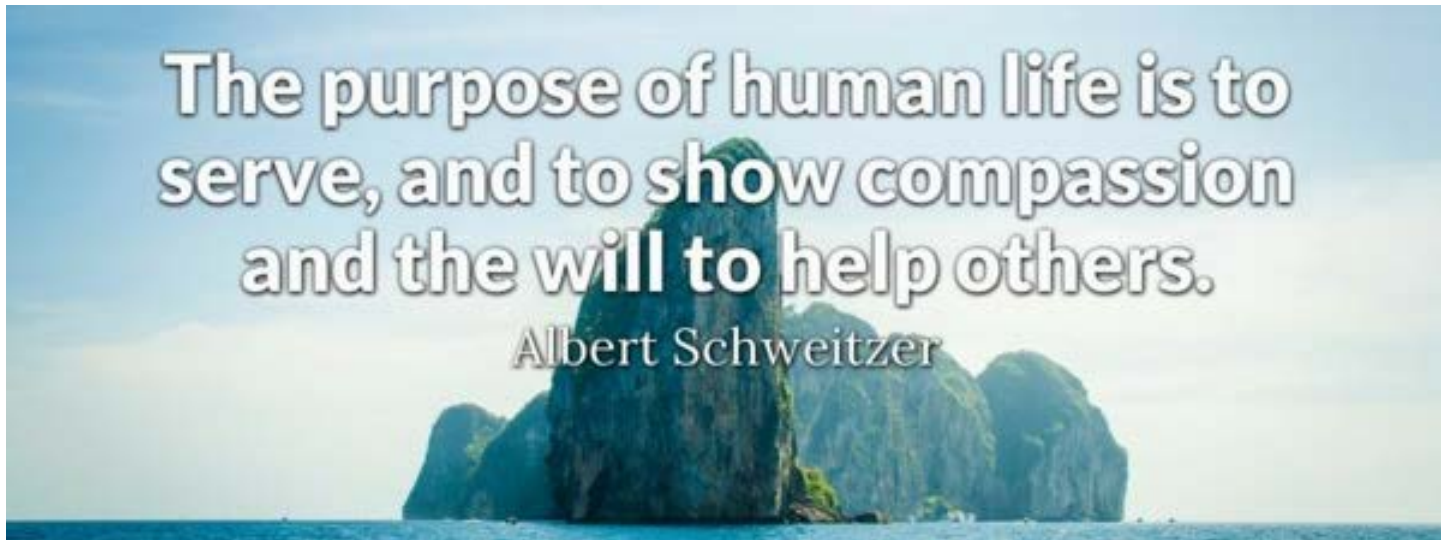


Monthly Developmental Asset #39 Sense of Purpose

Young person reports having a high self-esteem.

The purpose of human life is to
serve, and to show compassion
and the will to help others.

Albert Schweitzer



How sense of purpose affects youth?

- o Motivates youth to succeed
- o Encourages youth to try new things
- o Youth feels happier
- o Improves their state of mind



How youth can feel important?

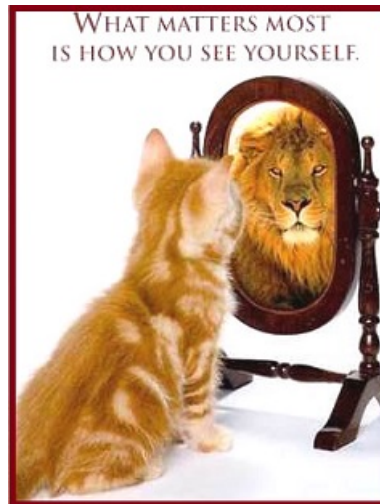
- o Support their ideas
- o Consider their personal opinions
- o Allow them to share their thoughts
- o Tell them they matter





December Complimentary Asset #37 Personal Power

Young person feels he or she has control over “things that happen to me.”



How this relates to sense of purpose?



- o Involves having good mental health – be positive, sleeping & eating well...

When you focus on what you want,
everything else falls away meaning.

- o Helps recognize self worth – self esteem

You are not your mistakes;
They are what you did,
Not who you are.

(Lisa Lieberman – Wang)

- o Ability to influence others – serve your community

The effect you have on other is the most valuable currency there is.

When you work towards something greater than yourself
you find meaning, you find purpose.

How have you helped the youth in our community feel important?

