



Regular Meeting Agenda

City Council

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

Wednesday, February 19, 2020 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

MORGAN HILL TENNIS CLUB- TONY BONTEMPI, PRESIDENT
VOTERS CHOICE PRESENTATION- SARA NICHOLSON, LEAGUE OF WOMEN VOTERS
YAC PRESENTATION- ASSET #26- CARING

CITY COUNCIL REPORTS

Mayor Pro Tem Martinez Beltran

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. STATUS REPORT ON BOYS AND GIRLS CLUBS OF SILICON VALLEY YOUTH PROGRAMMING AT PARK PLACE APARTMENTS

Recommendation:

Accept status report on Boys and Girls Clubs of Silicon Valley youth programming at Park Place Apartments.

2. ADOPT RESOLUTION SUPPORTING CONSIDERATION OF CUSTOMER OWNERSHIP IN PG&E RESTRUCTURING PROCESS

Recommendation:

Adopt resolution supporting the full consideration by the State Legislature, the California Public Utilities Commission, and the U.S. Bankruptcy Court of customer ownership in the PG&E restructuring.

3. APPROVE FIRST AMENDMENT TO WATERSMART SOFTWARE AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute the first amendment to WaterSmart's agreement to update an appendix to the agreement allowing for enhanced customer notifications.

4. APPROVE PACIFIC GAS AND ELECTRIC COMPANY AGREEMENT TO UNDERGROUND DRY UTILITIES FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company Agreement to underground dry utilities at the intersection of Dewitt and Spring Avenues for the Hale Avenue Extension Project for a not to exceed amount of \$157,883.

5. APPROVE FUNDING AGREEMENT AND BUDGET AMENDMENT FOR MADRONE CHANNEL TRAIL IMPROVEMENTS PROJECT GRANT

Recommendation:

1. Approve and authorize the City Manager to execute and administer the Santa Clara Valley Transportation Authority's funding agreement for the Bay Area Air Quality Management District Transportation for Clean Air Program (TFCA) grant program for up to \$33,400 towards the construction of the Madrone Channel Trail Improvements Project; and
2. Adopt resolution amending the adopted Fiscal Year (FY) 2019-20 budget in Park Impact Fees Fund (301) to recognize the TFCA Grant as revenue.

6. APPROVE PURCHASE OF A NEW SCHOOL RESOURCE OFFICER VEHICLE

Recommendation:

1. Approve the purchase and build-out of a 2020 Ford Explorer for the Police Department's School Resource Officer; and
2. Authorize the City Manager to approve the purchase order with Priority 1 Public Safety Equipment Installation, Inc. in the not to exceed amount of \$67,000.

7. AWARD CONTRACTS FOR ON-CALL EMERGENCY SPILL RESPONSE CLEANUP SERVICES

Recommendation:

1. Determine that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances pursuant to Morgan Hill Municipal Code 3.04.150 (1);
2. Award consultant agreements to All Clean Hazardous Waste Removal, Inc. ("All Clean") and Disaster Kleenup Specialists ("Disaster Kleenup") for emergency spill response cleanup services for three years with the option to extend the term of the agreements for an additional year; and
3. Authorize the City Manager to execute the agreements and other related documents for a three-year term not to exceed \$100,000 and authorize the City Manager to extend the term of the agreements for an additional year.

8. RATIFY CITY POSITION ON CALIFORNIA HOUSING BILL SB 50

Recommendation:

1. Receive legislative correspondence in opposition of Senate Bill (SB) 50 (Wiener) Planning and Zoning: Housing Development: Streamlined Approval: Incentives; and
2. Ratify City's position.

PUBLIC HEARING

9. ADOPTION OF RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO IMPLEMENT THE EMPLOYEE SHARE OF EMPLOYER CONTRIBUTION IN ACCORDANCE WITH SECTION 20516 OF THE CALIFORNIA GOVERNMENT CODE

Recommendation:

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement the pension cost share provision in accordance with California Government Code section 20516;
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce ordinance.

Estimated Time: 10 Minutes

OTHER BUSINESS

10. ACCEPT DECEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

11. CITY OF MORGAN HILL WEBSITE UPDATE

Recommendation:

Receive update on City of Morgan Hill website.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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





February

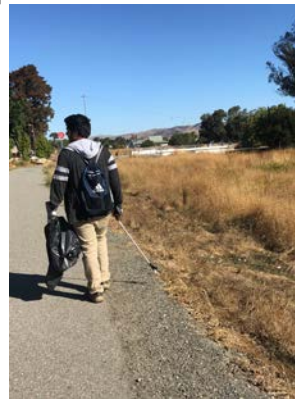
Developmental Asset #26

Caring

Young person places high values
on helping other people.

How to apply this asset?

- Small acts of kindness
- Take the time to learn about other people's backgrounds
- Community service
- Talking with each other



Benefits of being caring

- People are viewed as trustworthy
- Individuals feel appreciated
- Leadership qualities
- Creates a welcoming environment





February Complementary Asset number #38 Self-Esteem

Young person reports having a high self-esteem.

Relation and importance

- When you are kind to others, you can feel good about yourself
- When others compliment you, you feel better about yourself
- You're more likely to succeed in reaching your goals



**How has maintaining a caring attitude
in your community impacted
yourself and others?**





CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Mariah Dabel, Community Services Supervisor
APPROVED BY: City Manager

STATUS REPORT ON BOYS AND GIRLS CLUBS OF SILICON VALLEY YOUTH PROGRAMMING AT PARK PLACE APARTMENTS

RECOMMENDATION(S)

Accept status report on Boys and Girls Clubs of Silicon Valley youth programming at Park Place Apartments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
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:

This report provides a status update on the new service delivery model implemented for Park Place youth program services in fall 2019. The partnership has been a success to date. Boys and Girls Clubs of Silicon Valley (BGCSV) is providing quality services and has met all contractual obligations.

BGCSV began delivering the Park Place afterschool program in September 2019 through a funding agreement with the City. The program was previously staffed directly by City teammates.

BGCSV is delivering the afterschool program to children ages 6 to 13, Mondays through Fridays, from 2:45pm to 5:15pm at Park Place Apartments. The program includes academic support, arts, sports, and fitness and recreational activities. Participation and attendance remain strong, with 34 participants enrolled and an average daily attendance of 24 children.

BGCSV has added enhanced curriculum, staff training, and events and field trips for program participants. BGCSV hired the City's former Recreation Leaders to provide continuity for the youth participants. The staff participated in BGCSV's professional

development opportunities including Region 5 Rev Up Training and the Club Directors Academy. During the holiday season, youth and families participated in a Family Week Multi Cultural Dinner, a holiday celebration sponsored by the Giving Tree, and 10 youth and staff took a field trip to Great America's Winterfest.

To monitor the program and evaluate progress year to date, the City's Community Services Supervisor conducted site visits, reviewed quarterly reports, viewed records and program documentation, and met with the EAH Housing Resource Coordinator and the Boys and Girls Clubs of Silicon Valley Program Director.

This partnership is providing a more sustainable service delivery model and enhancing program services for participants. Program oversight provided by BGCSV has allowed for the reallocation of 25% of a City Recreation Coordinator's time to the Senior Center and outreach programs.

Background

To balance community access with fiscal sustainability and further leverage existing partnerships, the City of Morgan Hill entered into a funding agreement with BGCSV in July 2019 to deliver the afterschool and summer camp program at Park Place Apartments. The City is paying BGCSV \$72,000 per year to deliver 33 weeks of school year programming and a 7-week summer camp program to up to 50 youth, ages 6 to 13 at Park Place Apartments. EAH Housing is funding the continuation of Discovery Counseling Center's volunteer coordination services for school year homework assistance.

The City has supported the afterschool and summer program at the Park Place Apartments (formerly Village Avante) since 2015. The City's Community Services Department previously provided direct program supervision/staffing with a coordinator and recreation leaders and contracted with Discovery Counseling Center to coordinate volunteers for homework assistance.

COMMUNITY ENGAGEMENT: Inform

To support a successful transition, BGCSV and EAH Housing conducted outreach to families. BGCSV will also administer program surveys to gauge participant satisfaction.

ALTERNATIVE ACTIONS:

The City Council could reevaluate this service delivery model and revert to City staff delivering program services under the direction of the Community Services Department. The Parks and Recreation Commission will receive a program update on February 18, 2020; should the Commission provide recommendations relating to alternate actions, those will be forwarded to the Council.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- The City Council approved funding for two days per week of program (above the grant funded three days) in the 2015-16 and 2016-17 budgets.
- On July 16, 2019, the Parks and Recreation Commission recommended the City partner with the Boys and Girls Club to deliver the program at Park Place.

- On July 17, 2019, City Council approved a funding agreement with Boys and Girls Clubs of Silicon Valley for the provision of youth program services at Park Place.

FISCAL AND RESOURCE IMPACT:

The service delivery model change has been cost neutral. The adopted FY 2019-20 budget includes \$72,000 for the Park Place Apartments program, reallocated from part-time temporary personnel and materials/supplies to contractual services within the Community Services budget in the General Fund (010). This expense is partially offset by the CalVIP Grant.

CEQA (California Environmental Quality Act):

Not a Project.

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



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Anthony Eulo, Program Administrator

APPROVED BY: City Manager

ADOPT RESOLUTION SUPPORTING CONSIDERATION OF CUSTOMER OWNERSHIP IN PG&E RESTRUCTURING PROCESS

RECOMMENDATION(S)

Adopt resolution supporting the full consideration by the State Legislature, the California Public Utilities Commission, and the U.S. Bankruptcy Court of customer ownership in the PG&E restructuring.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Fiscal Responsibility

Advancing Regional Initiatives

REPORT NARRATIVE:

The purpose of this report is to provide the Council with the opportunity to consider engaging in the restructuring of Pacific Gas and Electric (PG&E) and adopt a related resolution.

The bankruptcy of PG&E and the numerous challenges faced by the company (power outages, fire liability, maintenance concerns, and executive bonuses) have been well-documented in the press for the past several years and many people have expressed outrage and dissatisfaction with the performance of the company. Recently, San Jose Mayor Sam Liccardo has asked other communities to join him and other leaders in calling for the State Legislature, the California Public Utilities Commission and the U.S. Bankruptcy Court to fully consider a proposal to transform PG&E into a customer-owned utility. Both the Governor and prominent legislative leaders have joined in the call to recreate PG&E with a new model.

The attached resolution, shared by Mayor Liccardo's Office, has been adopted by other communities and is a relatively simple and straightforward way to signal Morgan Hill's agreement that a customer ownership model for PG&E may provide substantial benefits to local residents and businesses and should be considered. Staff recommends adoption of the resolution and taking no additional actions at this time.

In a somewhat related development, the City has received information about the potential for the City itself to become actively involved in acquiring PG&E's electric assets in the community as a component of becoming a municipal electric utility. While

the benefits associated with owning a municipal electric utility are significant, the costs are also significant and the City does not have the technical expertise nor bandwidth to engage in such a complex process. Staff recommends that the City continue to monitor the evolution of PG&E and delay any additional consideration of municipalization at this time.

COMMUNITY ENGAGEMENT: Not Applicable

At this early point in the process, with little determined about the restructuring process, it would be inappropriate to actively engage the community and set expectations that may prove to be ultimately unattainable. Any additional significant involvement by the City in the PG&E restructuring will ultimately depend on collaborating with the community in determining the potential role that community members may wish to play.

ALTERNATIVE ACTIONS:

There are a number of alternative actions that the Council could choose to take, ranging from declining to adopt the resolution and engaging in the process at all, to appropriating funds and hiring a lobbyist to actively engage in the process, to appropriating even more funds to hire consultants to lay the groundwork for establishing a municipal utility.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No previous actions have taken place on this issue.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts at this time associated with adopting the resolution and no budget adjustment is requested. Becoming involved in the PG&E restructuring process and ultimately being involved in establishing a customer-owned entity could result in a broad range of fiscal impacts that are not easily quantified at this time.

While preparing a brief report and resolution was reasonably accommodated by Community Services Department staff, additional activities have not been planned for by any City staff and any additional actions may require a budget adjustment or the delay or reprioritization of existing work activities.

CEQA (California Environmental Quality Act):

Not a Project.

The recommended action of asking regulatory agencies and the State legislature to consider a different ownership model for PG&E will not result in physical changes to the environment and this action is, therefore, not a project under CEQA.

LINKS/ATTACHMENTS:

1. PGE restructuring resolution

RESOLUTION NO. XXXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CALLING FOR THE STATE OF CALIFORNIA LEGISLATURE, THE CALIFORNIA PUBLIC UTILITIES COMMISSION, AND FEDERAL BANKRUPTCY COURT TO CONSIDER RESTRUCTURING PACIFIC GAS AND ELECTRIC WITH A CUSTOMER OWNERSHIP MODEL**

WHEREAS, Californians have experienced a dystopia of alternating wildfires and blackouts that have displaced hundreds of thousands of residents, and disrupted the daily lives and livelihoods of millions more; and

WHEREAS, devastating blazes such as the Kincade Fire and the Camp Fire appear to have resulted from failed Pacific Gas & Electric (PG&E) infrastructure, following a decade in which the company distributed \$7 billion to shareholders, but chronically underinvested in basic maintenance and safety; and

WHEREAS, rate payers—including businesses and residents—critically need a utility company focused on placing the provision of reliable, safe, and affordable power above the interests of its shareholders; and

WHEREAS, any solution to this crisis will require access to tens of billions of dollars in capital markets to invest in maintenance, capital upgrades, and grid hardening; and

WHEREAS, a customer-owned utility would benefit from dramatically lower capital costs than PG&E does today, due in part to its lack of obligation to pay dividends to shareholders nor federal taxes; and

WHEREAS, by saving billions in interest payments, a customer-owned utility could devote more of its resources to improving the company's maintenance, infrastructure, and service; and

WHEREAS, the federal bankruptcy code and state law vest the California Public Utilities Commission (CPUC) with the responsibility for approving any Plan of Reorganization for PG&E that emerges from bankruptcy court, particularly where that Plan requires rate increases or access to the Wildfire Fund; and

WHEREAS, the bankruptcy court is considering two plans before it developed in the Chapter 11 proceeding by two sets of hedge funds with competing Reorganization Plans that reflect their proponents' interests in extracting investor value—through short-term financial gain—that will leave the company underinvesting in critical maintenance, safety, and infrastructure improvements; and

WHEREAS, Mayors and other local leaders across Northern and Central California—collectively representing more than 6 million residents—have publicly urged the CPUC to consider the exploration of a customer-owned utility; and

WHEREAS, hundreds of utility cooperatives—several with billions in revenues—currently serve more than 40 million customers in the U.S., at much lower costs of capital than investor-owned utilities; and

WHEREAS, while investor-owned utilities can offer a successful model in many contexts, the growing crisis of wildfires and increasing frequency of large, multi-billion-dollar losses demands a more sustainable ownership model for the company's operations.

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 calls for the State Legislature, the California Public Utilities Commission and the U.S. Bankruptcy Court to fully consider a proposal to transform Pacific Gas & Electric into a customer-owned utility.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 19th day of February 2020 by the following vote:

AYES: **COUNCIL MEMBERS:**

NOES: **COUNCIL MEMBERS:**

ABSTAIN: **COUNCIL MEMBERS:**

ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-xxx, adopted by the City Council at the meeting held on the 19th day of February 2020.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: PGE restructuring resolution [Revision 3] (2652 : PGE Restructuring)



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO WATERSMART SOFTWARE AGREEMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute the first amendment to WaterSmart's agreement to update an appendix to the agreement allowing for enhanced customer notifications.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

The purpose of this staff report is to provide the City Council with an opportunity to consider and approve an amendment to the City's contract with WaterSmart Software for water utility engagement services.

The City has contracted with WaterSmart for several years to provide Water Use Reports, Leak Detection Notification, and User Portal services. One of the most valuable aspects of these services is the connectivity it provides between the City's Water Utility and its customers.

The City can currently use WaterSmart to notify customers of neighborhood service outages by the email addresses in the system. Under the City's current contract, however, mobile phone numbers uploaded into the system by customers cannot be used for this purpose. The primary purpose of this proposed contract amendment is to update a key appendix to the agreement in order to enable the use of mobile phone numbers to provide customers with vital service information. The other paragraphs in the amendment are included in order to update the agreement with current laws and City policies.

Staff recommends that the Council approve the attached amendment to WaterSmart's agreement and authorize the City Manager to execute the amendment.

COMMUNITY ENGAGEMENT: Not Applicable

While the activities under WaterSmart's agreement pivot entirely on community engagement, this contract amendment will be transparent to the users of the system

and no specific community engagement about the amendment is warranted. Regardless of the amendment, staff will continue to encourage community members to deepen their engagement with WaterSmart in order to promote customer service and water efficiency.

ALTERNATIVE ACTIONS:

The Council could decline to approve the amendment which would prevent the City from using mobile numbers for important service alerts.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council authorized the original WaterSmart contract on April 2, 2014 and approved a second agreement on March 16, 2016. The current agreement was approved on September 27, 2017.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts resulting from the recommended action and no budget amendment is requested at this time.

CEQA (California Environmental Quality Act):

Not a Project.

This action authorizes an administrative activity which will not directly or indirectly lead to changes in the physical environment and it is, therefore, not a project under CEQA.

LINKS/ATTACHMENTS:

1. First Amendment to WaterSmart_Signedx2

FIRST AMENDMENT TO AGREEMENT WATERSMART SOFTWARE

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and WATERSMART SOFTWARE, INC, a Delaware Corporation ("CONSULTANT").

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 _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of September 27, 2017, for consultant services for a maximum compensation of \$228,062. ("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: The attached "Exhibit E: Services Agreement Supplement for Extended Messaging" shall be added to the CONSULTANT AGREEMENT.

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 7.22 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."

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

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:

City Attorney

Date: _____

WATERSMART SOFTWARE, INC.

DocuSigned by:

Chad Haynes

By:

Title: Chad Haynes

SVP, Engineeri

Print Name and Title of Signer.

If Corporate: Chairman, President or
Vice President

Date: 2/5/2020

DocuSigned by:

Kevin Kern

By:

Title: kevin kern

CEO

Print Name and Title of Signer.

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

Date: 2/6/2020

Attachment: First Amendment to WaterSmart_Signedx2 (2649 : WaterSmart Amendment)

**CONSULTANT AGREEMENT
WaterSmart Software**

THIS AGREEMENT is entered into and becomes effective on 10/5/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and WATERSMART SOFTWARE, INC a Delaware corporation, duly authorized to do business in California and will remain so during the term of this Agreement, ("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 September, 27, 2017.
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 to provide a comprehensive suite of water conservation reports and on-line resources as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$228,062.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed two hundred twenty-eight thousand sixty-two 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, unless the Scope has been amended to include additional services.
 - 4.2. **Billing.** CONSULTANT shall invoice CITY upon signing of the Agreement and be compensated as set forth in the Schedule B Compensation Schedule, and the CITY shall pay invoices within 30 days of receipt. Additional Services, requested and approved by the CITY, for work performed and expenses outside the Scope of Work, as described in Exhibit A, are not included in the total compensation in 4.1. CITY shall pay for requested and approved additional services pursuant to the terms and conditions set forth in an Amendment to this Agreement signed by both Parties and described in revised Exhibits A and B.
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, based on data, documents or information received from CITY, are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY. This Article 11 is subject to and further clarified by Section C of the Software-as-a-Service Provisions attached hereto and incorporated as Exhibit D (the "SaaS Provisions").
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:

Accounting Department
WaterSmart Software
20 California Street, Suite 200
San Francisco, CA 94111

Address of CITY is as follows:

Comm. Services Director
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

Attachment: First Amendment to WaterSmart_Signedx2 (2649 : WaterSmart Amendment)

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 reasonably examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement, during CONSULTANT's business hours with reasonable advance notice. 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 for CITY 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. The respective intellectual property rights of the Parties are further clarified by the SaaS Provisions attached and incorporated as Exhibit D (which Exhibit also includes other supplemental terms customary in the software-as-a-service sector).

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, provided, however, CONSULTANT may assign this Agreement without consent in connection with its merger, acquisition, or other change in control.

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

20. **Defense and Indemnification.**

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

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

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

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

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

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

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

23. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties

including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

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

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

Signatures of Next Page

Attachment: First Amendment to WaterSmart_Signedx2 (2649 : WaterSmart Amendment)

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:

for 
 City Clerk/Deputy City Clerk

Michelle Wilson
 Print Name

Date: 10/6/17

APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin
 Print Name

Date: 10-2-17

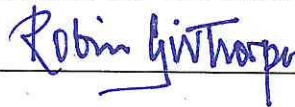
CITY OF MORGAN HILL


 City Manager

Christina Turner
 Print Name

Date: 10/5/17

WATERSMART SOFTWARE, INC

By: 

Title: ROBIN GILTHORPE • PRESIDENT
 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 23 AUGUST 2017

By: 

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

Date: August 25, 2017

Exhibit A: Scope of Work

Program at a Glance

Program Overview

- Program Length: One 9 month term, Four 12-month terms, starting in October 2017
- Current Accounts:
 - 9,970 Single Family Residential (SFR) Accounts
 - 2,312 Multi-Family Residential (MFR) Accounts
 - 783 Commercial, Institutional and Industrial (CII) Accounts
 - 559 Irrigation Only Accounts
 - 158 Other Accounts
- Meter Data:
 - ☒ AMI
 - ☒ AMR/Manual
 - ☐ Rolling Reads

Dashboard and Portal

- Customer Portal:
 - Access for all accounts
 - Electronic Bill Presentment
 - ☒ Link to Existing Payments Portal
- Utility Analytics Dashboard: Profiles for all accounts
 - Group Messenger & List Builder: Included

Customer Letter

- Not selected

Water Reports

- Recipients: Up to 10,500 SFR and Commercial accounts
 - Frequency:
 - Up to 6 Water Reports per account (note: delays on part of utility may reduce cycles sent during term)
- ☒ Rolling Enrollment

Optional Services:

- ☒ Single Sign-On (SSO) to Info Send

Section 1: Introduction and Program Elements

Introduction

WaterSmart Software ("WaterSmart") is a customer engagement and analytics platform. City of Morgan Hill ("Utility") has contracted with WaterSmart to continue a customer engagement program to serve its population.

The program is comprised of the following elements, which are explained in more detail below:

- Utility Analytics Dashboard: Analytics, customer support tools and Program performance data for Utility staff
- Customer Portal: Additional engagement and information for account owners
- Alerts: Leak and high usage alerts (if selected)
- Water Reports and Customer Letters: Customized communications mailed or emailed to each participant (if selected)
- Single Sign On (SSO): We support SSO (Single Sign On) using the SAML2 protocol, as well as Facebook Connect. For SAML2 and OAuth integrations, the utility or their solution provider must be capable of acting as a compliant Identity Provider (IdP). We have the capability to easily integrate this data with your utilities' website.

As a software-as-a-service (SaaS) provider, WaterSmart provides all major program elements to the Utility:

- Hosting of WaterSmart Customer Portal and Utility Analytics Dashboard;
- Creation and delivery of Utility-branded Water Reports and alerts to Utility water customers (if selected); and
- Measurement and verification to allow the Utility to evaluate the program (if selected).

Utility is responsible for providing WaterSmart key program inputs including account information, regular feeds of meter data, and logos and contact information. Utility maintains responsibility as the primary contact for customer inquiries and technical assistance.

WaterSmart and Utility shall each designate a Project Manager for the program. All Utility decisions shall be channeled through the Utility Project Manager. In addition, Utility shall designate a Data contact who is responsible for providing the data indicated below.

This scope of work and agreement cover services rendered over term of the agreement.

Utility Analytics Dashboard

The Utility Analytics Dashboard is available to staff through web interface, and unlike the Portal, is not optimized for mobile. The Dashboard provides insights on customer engagement and water use efficiency, both on an aggregate level and for individual customer accounts. The Utility Analytics Dashboard includes data for all customer classes whose data is provided to WaterSmart. WaterSmart host the Utility Analytics Dashboard and is responsible for all maintenance and security. The Utility may use the Utility Analytics Dashboard to create individualized, separate logins for as many Utility staff as it wishes.

Customer Portal

The WaterSmart Customer Portal, available to customers through a mobile and web interface, allows the Utility to engage with its customers, deliver targeted, personalized messages about their water use, alert them about potential leaks, inform them about rebate programs, educate them on the value of water, and, if selected, allow a user to view and pay their bill. The Portal features an integrated customer survey to gather important customer details related to occupancy, appliance age, water use behavior, and other important metrics. Users or managers of multiple units, such as homeowners associations and commercial organizations, can also see a combined view of all consumption data in a unified view. WaterSmart host the Customer Portal and is responsible for all maintenance and security.

Alerts and Notifications

WaterSmart can provide alerts to residential customers to notify of a potential leak, to notify a customer that they have reached a self-selected consumption threshold, or, if selected, notify a customer of a bill being available, due or overdue. Alerts and notifications can be sent through multiple channels -- email, SMS text message, or automated voice call. Customers must opt-in through the Customer Portal to receive alerts via SMS text message or automated voice call.

Customer Letter

If selected (specified in Program at a Glance), Customers who have access to the Customer Portal and/or that receive Water Reports are sent a Customer Letter to explain the program and its benefits. Through the Customer Letter sent to single-family residential (SFR) customers also directs them to an online survey to fill out their household profiles. The Customer Letter is branded for the Utility (including Utility logo, contact information and a signature line from an appropriate Utility representative) and informs recipients about the program and what they can expect to receive.

Water Reports

Water Reports are informative, carefully designed reports that help deliver targeted messages from the Utility to customers including messages about water efficiency, social comparisons, the value of water, and rate changes. Water Reports can be sent via mail or email, and may be targeted to certain accounts (specified in "Special Circumstances" under the Program at a Glance and subject to approval by WaterSmart), sent to randomly selected accounts as part of a randomized control trial, or sent to all of a utility's customers. Content and design of all materials are subject to change over time, as WaterSmart incorporates new features.

Surveys

WaterSmart invites enrolled accounts to respond to two surveys on behalf of the Utility. The first is the Customer Profile available to customers through the Customer Profile and linked to in the Customer Letter. For those utilities which are including Water Reports or Customer Letters in their Program, WaterSmart also sends a digital invitation to complete a post-launch Satisfaction Survey on behalf of the Utility to all accounts for which an email address is available.

Group Messenger & List Builder

Group Messenger is a module within the Utility Analytics Dashboard that allows the Utility to send targeted, personalized messages to groups of customers quickly. The Utility can select from preloaded message templates or create their own, and select recipients quickly from preloaded lists, custom created lists (using our List Builder tool), as well as exclude certain recipients. Group Messenger tracks message delivery times, delivery rates, open and click rates, and other engagement metrics.

2: Program Design**Experimental and Control Group**

If selected, WaterSmart uses a randomized control group design to ensure the water saved in single-family residential accounts as a result of the WaterSmart program can be accurately measured and verified. While the Residential Recipients, as specified in the Program at a Glance, receives Water Reports the Control Group does not. This program design allows WaterSmart to compare the changes in water consumption and customer satisfaction of the participants versus the control group and provide the Utility with formal statistical results. While the group of Residential Recipients may expand after the first term of the project, only the first group of recipients are used to measure results.

Water Reports

Recipients

The number of recipients (specified in the Program at a Glance) may vary slightly in any cycle of Water Reports based on the availability of valid meter data available for each account and the number of new or closed accounts in a given period. Water Reports are sent digitally where valid email addresses are available, and by print otherwise.

Number and Scheduling of Cycles and Shipments per Report

Each enrolled account is eligible to receive a Water Report in each of the 4, 6 or 12 cycles of reports per term, as specified in the Program at a Glance. Some accounts may receive fewer Water Reports due to a missed or incorrect reads, or a closing or opening of a new account with the Utility.

Each cycle of reports can be sent in one or more shipments, with each shipment going to a subset of households. WaterSmart ships Water Reports based on the schedule that the Utility transfers billing data to WaterSmart. For utilities that provide account billing data to WaterSmart on a rolling basis (with billing data for a subset of accounts transferred each day or each week), WaterSmart sends out shipments for each cycle on a weekly basis. For utilities that provide account billing data to WaterSmart once per billing period, WaterSmart sends each cycle of Water Reports in a single shipment.

The schedule of these shipments is given below:

Table 1: Schedule of Water Reports Shipments

Utility Transfers Billing Data to WaterSmart:	WaterSmart Sends Shipments of each Report Cycle:
Daily	Weekly
Weekly	Weekly
Monthly	Monthly
Bi-Monthly	Bi-Monthly

The report delivery schedule is designed so that every customer account is eligible to receive a report in each cycle. If the Utility wishes to stagger the initial set of reports over more than one cycle or in such a way that it does not correspond to the utility billing data transfer schedule, these are special circumstances that must be identified in advance in the "Program at a Glance" section at the front of this Scope and are subject to approval by WaterSmart.

The delivery of the Customer Letter and the initial cycle of Water Reports are scheduled in conjunction with the Utility. Email deliveries may be scheduled to arrive on, or avoid, a specific day of the week. Print deliveries are subject to postal schedules and cannot be guaranteed for specific dates. Utility-requested delays in sending materials may result in fewer reports per recipient than the maximum number specified in the contract.

Cohort Group

For utilities sending Water Reports to single family residential customers, WaterSmart creates cohort groups of similar residences in order to maximize the relevance of water use comparisons and potential water savings. Cohort groups may include the following variables:

- Number of occupants per home (based on user-generated information and real-estate based estimates)
- Irrigable area (e.g. small, medium, large, etc.) to be determined based on home size and lot size information contained in real estate data obtained by WaterSmart, or optionally, provided by Utility if it already possesses such information
- Residence location (e.g. city, zip code, etc.) for utilities which span large areas

Post-Launch Survey

A post-launch survey is available to those Utilities which have selected WaterSmart Water Reports. WaterSmart sends a link to a post-launch survey to accounts with email addresses. The post-launch survey typically is conducted after at least eight months of engagement. WaterSmart provides a sample of the Satisfaction Survey invitation, including one block of content, which the utility may personalize. Utility should provide consolidated comments and final approvals to WaterSmart no more than ten (10) business days from when initial materials are provided to Utility. The results of the surveys are used to gauge customer satisfaction and Water Report perceptions. WaterSmart shares all results of the surveys with Utility.

Measurement and Verification

WaterSmart reports changes in consumption for the experimental group versus a randomized control group selected from Utility's entire population of residential households. After three Water Reports have been sent,

WaterSmart prepares an efficiency study that details the change in water usage for the experimental versus control group, and load those results into the Utility Analytics Dashboard. This evaluation is performed with a Fixed-Effects regression model using the consumption data for each household in the experimental and control groups. The efficiency study report includes percentage savings, GPD (Gallons per Day) savings and Acre Foot savings at the program level for all months after the first Water Reports were sent. While WaterSmart can continue to measure results after the first term (as long as a control group is maintained), Water Report recipients added to the program after the first term is not be included in the experimental group.

Section 3: Customer Service and Support

Customer Service Support

Utility shall have first tier responsibility for providing customer service to Customers. WaterSmart provides a list of Frequently Asked Questions to both enrolled Customers and Utility staff to facilitate this process. WaterSmart also provides a Customer Detail section within the Utility Analytics Dashboard, which is designed to help customer service representatives respond to Customer inquiries.

WaterSmart's project manager works with Utility's primary contact to assist in addressing additional customer issues. All inquiries from Utility customers outside the scope indicated above, including without limitation questions about water data, is directed to the Utility. WaterSmart provides service and support to Utility's Project Manager regarding technical questions about WaterSmart's Customer Portal and Utility Analytics Dashboard Web applications and Water Reports between the hours of 7 a.m. and 6 p.m. PST Monday thru Friday, excluding federal holidays. Post launch, Project Managers are available for one hour of discretionary assistance per week. Additional assistance is available at the hourly rate of \$200 per hour for Project Managers, and \$250 per hour for Engineering Support.

To further assist in answering questions, WaterSmart offers a Support Site with product guides, instructional videos, frequently asked questions, marketing materials, and many other useful resources. The Utility Analytics Dashboard also offers a chat feature ("Intercom") that allows Utility staff to communicate and engage actively with the entire Customer Success team, for a more high-level response of customer and product support in-app and through email. Utility staff can use the Intercom feature to ask questions and provide feedback, and can expect to receive a response within two business hours from members of the WaterSmart team.

Maintenance of Web Applications

WaterSmart maintains commercially reasonable systems and controls designed to maximize monthly uptime and minimize unscheduled outages of the Customer Portal and Utility Analytics Dashboard. Excluding any down time for maintenance and/or upgrades, WaterSmart makes strong efforts to provide Customers and Utility with access to their respective Web applications on a continuous basis. WaterSmart provides advance notification of any planned outages and notifies Utility without unreasonable delay if it detects or receives notice of any material problems relating to the Customer Portal and/or the Utility Analytics Dashboard.

WaterSmart's Web Applications include dynamic and interactive charts and tables that may not be compatible with older Internet browsers.

The Internet browser and operating system requirements are:

- Windows XP: Chrome 38+, Firefox 32+
- Windows 7, 8, 8.1, 10: IE 9+, Chrome 38+, Firefox 32+
- Mac: Chrome 38+, Firefox 32+, Safari

Data Security and Privacy

WaterSmart does not share personally identifiable customer information or customer-specific water use information with any third party without prior consent from Utility. Data transferred to WaterSmart from Utility is stored in a database dedicated to Utility and its WaterSmart project. The data is not be comingled with the data provided by any other entity; provided, however, that certain anonymous data may be copied and consolidated with data provided by one or more other entities for the research and product development purposes subject to the terms of the Agreement.

WaterSmart enacts standard controls, policies, and procedures to ensure the security of Utility's data and customer provided information, including but not limited to choosing a reputable cloud-server vendor with appropriate physical security of server infrastructure, secure public-private key-based login to all WaterSmart server infrastructure, password authentication on all Web site interaction, and audit logging.

WaterSmart provides Utility with private key access to a secure FTP destination for regular delivery of the data. This secure FTP site is hosted on WaterSmart's server infrastructure. Utility agrees to send data only through this secure channel and not through any other method.

Appendix A: Water Report Configurable Areas

Figure 1: Configurable Areas in Home Water Reports setup during Initialization

Settings supplied by utility

1. Utility logo
2. Utility address
3. Utility phone
4. Utility email, 25 char max
5. Program URL, 30 char max
6. Native units
7. Social media links

Defaults can be updated by request, within the space limitations of the report

- A. Program name
- B. 2 Registration keys

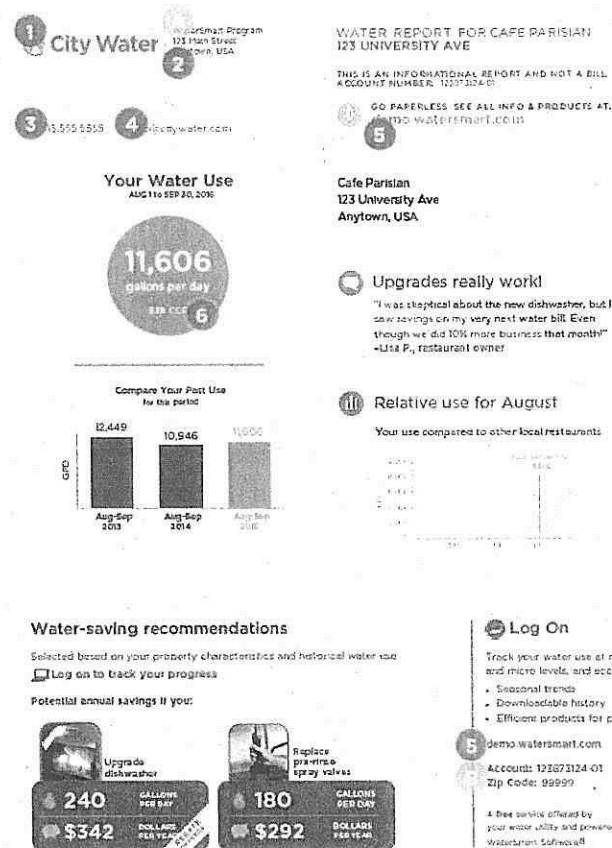


Exhibit B: Payment Terms

Compensation and Utility Obligations

For items listed in the above Scope of Services, Utility shall compensate WaterSmart according to the Fee Schedule below. **Utility acknowledges its responsibilities and obligations, in particular in regards to the expertise and planned IT committment to provide data needs as described in the Data Specification file.**

Delays on the part of the utility may reduce the number of months the Utility and its customers have access to WaterSmart products and services, but does not reduce Fee Schedule.

Table 2: Fee Schedule

Table A: Fee for 5 Year Program Discount is based on multiyear program		
Item Summary	Fee	
	Payment Due	
Year 1: 9 months: Includes up to 6 Water Reports to SFR & CII customers; access to the Customer Portal for all customers; AMI (real-time) water use data on the Customer Portal and Dashboard; AMI leak and high water-use alerts via text, voice and/or email; and Utility Analytics Dashboard with all account information, customer support tools and reports, plus Group Messenger	\$37,154	Biannually; first payment is due 30 days contract signing and then every six months
Year 2: 12 months: Same as Year 1 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 2 and then every six months
Year 3: 12 months: Same as Years 1-2 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 3 and then every six months
Year 4: 12 months: Same as Years 1-3 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 4 and then every six months
Year 5: 12 months: Same as Years 1-4 and any new features & capabilities within the Scope of Work.	\$47,727	Biannually: at the start of year 5 and then every six months
Total for 57 month program	\$228,062	

Contact for Invoices

Utility contact for all invoicing purposes is Anthony Eulo, Program Administrator, City of Morgan Hill, 17575 Peak Ave, Morgan Hill, CA, 95037.

For any questions regarding WaterSmart Contracts, please contact WaterSmart Accounting at business@watersmart.com, 415.366.8622 x 815. All written correspondence can be sent to:

Accounting Department

WaterSmart Software

20 California Street, Suite 200

San Francisco, CA 94111

Attachment: First Amendment to WaterSmart_Signedx2 (2649 : WaterSmart Amendment)

Exhibit C: Schedule of Performance

Implementation Schedule

WaterSmart proposes the following schedule to complete all work required to fulfill the Scope of Work.

Table 3: 6 Water Report Implementation Schedule

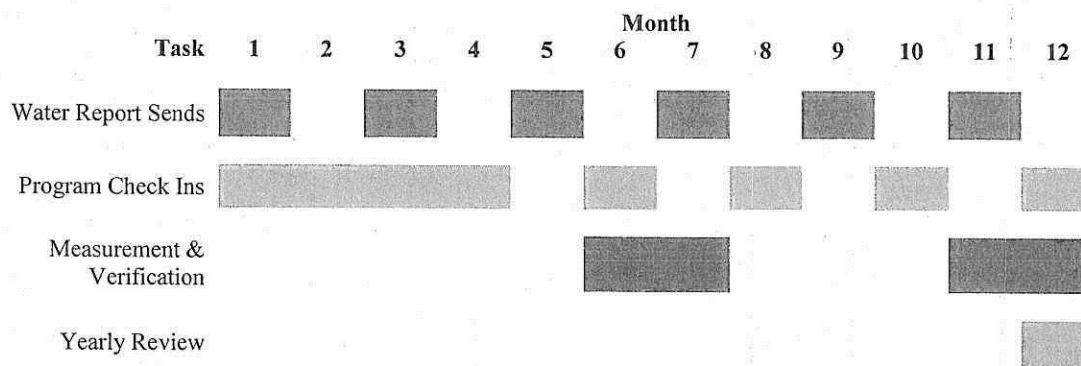




Exhibit D

SOFTWARE-AS-A-SERVICE PROVISIONS

BACKGROUND: WATERSMART's customer engagement and data analytics services are to be provided primarily by utilization of WATERSMART's proprietary software hosted on WATERSMART's computer systems and accessed by authorized users over the Internet. This is a shared cost software utilization model which enables customers to achieve substantial cost savings versus commissioning custom development of software or licensing software for installation and maintenance on customers' computer systems. Companies like WATERSMART are commonly referred to as "SaaS" or "software-as-a-service" providers. Certain supplemental provisions which are customary within the SaaS sector and essential to enabling WATERSMART's SaaS service model and providing substantial cost savings for Utility, are set forth below and incorporated by reference in the Agreement. Also included below are additional terms applicable to bill payment, leak alert and group messenger services if such services are elected by Utility.

A. WATERSMART's reservation of intellectual property rights

WATERSMART has created, acquired or otherwise currently has rights in, and may, in connection with the performance of this Agreement or otherwise develop, create, employ, provide, modify, acquire or otherwise obtain rights in various inventions, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, software, applications, documentation, user interfaces, screen and print designs, source code, object code, databases, algorithms, development framework repositories, system designs, processing techniques, tools, utilities, routines and other property or materials, including without limitation any and all subject matter protected or which may be protected under patent, copyright, mask work, trademark, trade secret, or other laws relating to intellectual property, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world ("WATERSMART IP"). Utility acknowledges that WATERSMART owns and shall own all intellectual property rights in and to deliverables hereunder, the WATERSMART IP and derivative works of WATERSMART IP (whether independently or jointly conceived), regardless of whether or not incorporated in any print or electronic Water Reports, Customer Portal, Utility Dashboard, or other software or deliverable provided to Utility by WATERSMART, and that Utility shall acquire no right or interest in the same.

Utility agrees to assign, and hereby does assign, any right, title and interest in any suggestions, enhancement requests, or other feedback provided by Utility relating to services

offered by WATERSMART. If and to the extent any such assignment is ineffective, Utility hereby grants to WATERSMART a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into its services any such suggestions, enhancement requests, or other feedback provided by Utility.

Subject to the foregoing, authorized employees and customers of Utility may during the term of the Agreement access and use the WATERSMART SaaS services, print and electronic Water Reports, Customer Portal, Utility Dashboard, Extended Messaging Services, other deliverables provided to Utility by WATERSMART, and applicable bill presentment and payment services, each as so specified by the Scope of Work, for purposes of Utility's customer engagement program, customer billing, and for Utility's internal purposes, so long as Utility is current with respect to its financial and other obligations under the Agreement. Such authorization is limited to Utility's service territory and is non-exclusive, non-transferable, and non-sublicenseable. If Utility enters into an agreement with a third party contractor of WATERSMART related to bill payment services, the intellectual property provisions of such agreement shall apply with respect to intellectual property owned or controlled by such third party. Any rights not expressly granted herein are reserved by WATERSMART and its licensors.

B. Utility's cooperation in providing necessary inputs

Deliverables to be provided by WATERSMART via its proprietary software require certain data from Utility. Utility shall provide WATERSMART with those data, records, reports, approvals and other inputs identified for Utility to provide in the Scope of Work or otherwise requested by WATERSMART. Utility shall ensure that such inputs are accurate and within Utility's legal rights to share with WATERSMART subject to the confidentiality and other applicable provisions of the Agreement. Time is of the essence, and Utility shall provide its inputs within the timeframes specified for Utility by the Scope of Work. If bill payment services are included in the Scope of Work, Utility shall cooperate with WATERSMART and its applicable third party partner(s) in timely providing the data, records, reports, approvals and other inputs requested for such services. WATERSMART shall not be responsible for delays outside WATERSMART's control, and deadlines for WATERSMART's performance shall be adjusted, if necessary, to accommodate delays by Utility.

C. Confidentiality and WATERSMART's use of aggregated data

All data, documents and other information received or accessed by one party ("Receiver") from the other party or its end users (collectively, "Discloser") for performance of this Agreement, including without limitation personally identifiable information and financial

information, are deemed confidential. Such information shall not be used or disclosed by the Receiver without the prior written consent of the Discloser or owner (which may include without limitation consent by end users to share any information with additional users they authorize), except to the Receiver's employees and contractors on a need-to-know basis for performance of this Agreement with appropriate confidentiality protections. For this purpose, protected confidential information shall not include (i) information that, at the time of disclosure, is publicly available or generally known or available to third parties, or information that later becomes publicly available or generally known or available to third parties through no act or omission by the Receiver; (ii) information that the Receiver can demonstrate was in its possession prior to receipt from the Discloser; (iii) information received by the Receiver from a third party who, to the Receiver's knowledge and reasonable belief, did not acquire such information on a confidential basis from the Discloser; (iv) information the Receiver can demonstrate was independently developed by it or a third party; or (v) information that the Receiver is legally required or compelled by a court to disclose.

The foregoing confidentiality obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. Utility hereby gives its permission to WATERSMART to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to Utility end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section C shall survive any termination or expiration of the Agreement.

Each party shall post and comply with its applicable privacy policy.

D. Software corrections and third party acts; limitation of liability for SaaS services

In the event that WATERSMART's services fail to meet specifications or other requirements specified by the Scope of Work, Utility shall promptly notify WATERSMART and WATERSMART shall promptly correct any defect or substitute services, software, or products to achieve the functionality and benefits originally specified. If WATERSMART promptly makes such correction or substitution, WATERSMART shall have no further liability with respect to said defect(s), notwithstanding any other provision of the Agreement. All warranties not expressly stated in the Agreement are disclaimed. Utility understands that Utility's use of WATERSMART's services provided online may be interrupted by circumstances beyond WATERSMART's control involving third parties, including without limitation computer, telecommunications, network, Internet service provider or hosting facility failures or delays

involving hardware, software, networks, or power systems not within WATERSMART's possession or direct control, and network intrusions or denial of service attacks (collectively, "Third Party Acts"). WATERSMART shall not be responsible or otherwise liable for any Third Party Acts, including, without limitation, any delays, failures, or security breaches and damages resulting from or due to any Third Party Acts, provided that WATERSMART has exercised due care. However, in the case of any Third Party Act which delays or prevents WATERSMART from providing online services to Utility, WATERSMART promptly notifies Utility and assist in mitigating any impact. Neither party is liable to the other, under any non-indemnity claim relating to this Agreement, for any indirect, incidental, exemplary, special, reliance or consequential damages, including loss of profits or loss of data, even if advised of the possibility of these damages. Under no circumstances or event shall WATERSMART's total cumulative liability for losses or damages of any kind arising under or relating to this Agreement and under any theory (contract, tort, defense and indemnity, or otherwise), exceed (i) the fees received by WATERSMART for the services that give rise to the liability in the twelve months preceding the accrual of such liability, or (ii) available insurance proceeds from WATERSMART's carriers, whichever is higher. If Utility enters into an agreement with a third party contractor of WATERSMART related to bill payment services which specifies a lower limit of liability with respect to such services, the same limit shall apply to WATERSMART's liability (if any) with respect to such services. The foregoing limited remedy and limitation of liability provisions shall apply notwithstanding any conflicting provisions or any failure of essential purpose with respect to a limited remedy or limitation of liability, and shall survive any termination or expiration of the Agreement. Utility acknowledges that pricing for WATERSMART's services would be substantially higher without the aforementioned limitations.

E. Technology and services infrastructure vendors

WATERSMART as a SaaS provider utilizes the secure cloud hosting platform of a third party industry leader in cloud computing with state-of-the art security to host the data of all WATERSMART customers. WATERSMART utilizes a reputable third party vendor to perform printing and mailing services when included within the scope of WATERSMART's work. For bill payment services, including credit card, debit card, and ACH payments and authentication, WATERSMART utilizes leading edge, reputable third party vendors specializing in such functions. Since the referenced cloud hosting platform, printing and mailing vendors, bill payment services providers, and certain other vendors performing similar or related functions, are integral components of WATERSMART's technology and services infrastructure used

across its pertinent customer base and are not specific to Utility and services under this Agreement, Utility acknowledges that such utilization is not considered subcontracting of WATERSMART's services under this Agreement.

If Utility enters into an agreement with any third party contractor of WATERSMART for any services ancillary or related to the services provided by WATERSMART during the term of this Agreement, Utility shall first seek and exhaust all remedies from such third party contractor prior to seeking any remedy from WATERSMART with respect to such services.

F. Compliance With Laws

WaterSmart shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances as may be applicable to the performance of services under this Agreement. Utility shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances related to this Agreement, and shall have sole responsibility for securing any necessary regulatory approvals, if any, for this Agreement and/or the services hereunder.

Utility shall be responsible for obtaining from its end customers any consents and providing any notices, if any are legally required, for the services to be provided by WaterSmart hereunder.

G. Extended Messaging Services

If Utility elects to utilize WATERSMART's leak alert or group messenger services, certain supplemental legal terms shall apply. These supplemental terms ("Extended Messaging Terms") are set forth below and shall prevail in the event of any conflict or inconsistency. For avoidance of doubt, the Extended Messaging Terms apply to all WATERSMART services involving automated phone calls (conventional and mobile), pre-recorded messages, text messages, and other such bulk communications (including emails outside of WATERSMART's core customer engagement offerings) (collectively, "Extended Messaging Services").

1. Utility shall be solely responsible for the content of any messages or communications to end customers which Utility initiates or authorizes in connection with the Extended Messaging Services, as well as Utility's selection of any vehicle (ie., conventional phone, mobile phone, text, email) for such messages or communications. WATERSMART shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by Utility or its representatives. In furtherance of the foregoing, Utility shall hold harmless, defend and indemnify WATERSMART and its officers, directors,

employees, contractors, representatives and volunteers from and against all claims, damages, losses and expenses including without limitation any statutory damages, penalties, and attorney's fees, arising out of or relating to the Extended Messaging Services or any breach by Utility of the Agreement including without limitation these Extended Messaging Terms. For avoidance of doubt, if the Agreement has other indemnity provisions in favor of Utility such provisions shall not apply to the Extended Messaging Services, except in the event of WATERSMART's willful misconduct.

2. If Utility elects to make available to its end customers Extended Messaging Services offered by WATERSMART to alert end users of potential leaks or high water usage, the pertinent end users and Utility assume all risks associated with such alerts, and no indemnity provisions in favor of Utility shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of WATERSMART's willful misconduct.
3. With respect to Extended Messaging Services, WATERSMART's role is limited to delivering via its technology platform Utility's communications through vehicles selected by Utility; accordingly, compliance with applicable laws (which may vary by state and locale) is strictly Utility's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.
4. Utility is encouraged to consult legal counsel of its own with respect to this Agreement and in reference to Federal Communications Commission Declaratory Ruling FCC 16-88 (released August 4, 2016), any Extended Messaging Services, and compliance with applicable federal, state and local laws, regulations and regulatory rulings, and ordinances. Utility shall not rely on WATERSMART or WATERSMART's representatives for legal advice or guidance concerning the content or appropriate vehicles (ie., conventional phone, mobile phone, text, email) for communications with Utility end customers.
5. In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, WATERSMART may utilize one or more third party communications technology and communications services providers. Since such providers are utilized across WATERSMART's pertinent customer base and are not specific to Utility and service choices by Utility under the Agreement, Utility acknowledges that such utilization is not considered subcontracting of WATERSMART's services under the Agreement.

Exhibit E

**Services Agreement Supplement for Extended Messaging**

WaterSmart Software, Inc. ("WaterSmart"), a Delaware Public Benefit Corporation, and the City of Morgan Hill ("Utility"), have previously entered into a Services Agreement dated October 5, 2017 (the "Agreement"). The Agreement includes as its "Attachment A" a scope of work describing services to be provided by WaterSmart and cooperation required of Utility. Utility now desires to extend the scope of work to include additional communication services, as specified by Exhibit E-1 attached hereto. If and to the extent specified by Exhibit E-1, such communications services may include automated email, phone calls (conventional and mobile), pre-recorded messages, and text messages, including bulk communications, transmitted by WaterSmart or its communications technology providers on behalf of Utility (collectively, "Extended Messaging Services").

Certain supplemental legal terms shall apply to Extended Messaging Services, and these terms are set forth below. These terms are supplemental to the pre-existing terms of the Agreement and shall prevail in the event of any conflict or inconsistency. The Agreement is hereby amended to include these supplemental terms and Exhibit E-1 attached hereto, effective as of the date signed by Utility below.

1. Utility shall be required to supply WaterSmart with certain information pertaining to Utility's end customers as specified by Exhibit E-1, which may include without limitation conventional and mobile telephone numbers, email addresses, and other personally identifiable information necessary for WaterSmart to provide the Extended Messaging Services. Such information shall be regarded as confidential information under the Agreement. WaterSmart and its communications technology and communications services providers may use such information, and WaterSmart may disclose such information to its employees and contractors (with appropriate confidentiality protections), only as necessary to provide the Extended Messaging Services.
2. Utility shall be solely responsible for the content of any messages or communications to end customers which Utility initiates or authorizes in connection with the Extended Messaging Services, as well as Utility's selection of any vehicle (ie., conventional phone, mobile phone, text, email) for such messages or communications. WaterSmart shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by Utility or its representatives. In furtherance of the foregoing, Utility shall hold harmless, defend and indemnify WaterSmart and its officers, directors, employees, contractors, representatives and volunteers from and against all claims, damages, losses and expenses including without limitation any statutory damages, penalties, and attorney's fees, arising out of or relating to the Extended Messaging Services or any breach of the Agreement including these supplemental terms. For

avoidance of doubt, the Agreement's other indemnity provisions in favor of Utility shall not apply to the Extended Messaging Services, except in the event of WaterSmart's willful misconduct.

3. If Utility elects to make available to its end customers Extended Messaging Services offered by WaterSmart to alert end users of potential leaks or high water usage, the pertinent end users and Utility assume all risks associated with such alerts, and no indemnity provisions in favor of Utility shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of WaterSmart's willful misconduct.
4. Utility shall comply with all federal, state and local laws, regulations and regulatory rulings, and ordinances related to this Agreement, and shall have sole responsibility for securing any necessary regulatory approvals, if any, for the Extended Messaging Services. With respect to Extended Messaging Services, WaterSmart's role is limited to delivering via its technology platform Utility's communications through vehicles selected by Utility; accordingly, compliance with applicable laws (which may vary by state and locale) is strictly Utility's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.
5. Utility shall be responsible for obtaining from its end customers any consents and providing any notices, if any are legally required, for the Extended Messaging Services.
6. Utility acknowledges that it has been provided with a copy of Federal Communications Commission Declaratory Ruling FCC 16-88 (released August 4, 2016), and is encouraged to consult legal counsel of its own with respect to this Agreement, any Extended Messaging Services, and compliance with applicable federal, state and local laws, regulations and regulatory rulings, and ordinances. Utility shall not rely on WaterSmart or WaterSmart's representatives for legal advice or guidance concerning the content or appropriate vehicles (ie., conventional phone, mobile phone, text, email) for communications with Utility end customers.
7. In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, WaterSmart may utilize one or more third party communications technology and communications services providers. Confidential and personally identifiable information received from Utility or its end users may be shared with such providers as necessary for performance of their services. Since such providers are utilized across WaterSmart's pertinent customer base and are not specific to Utility and service choices by Utility under the Agreement, Utility acknowledges that such utilization is not considered subcontracting of WaterSmart's services under the Agreement.

Exhibit E-1

Extended Messaging Services

The Group Messenger Module allows utilities to quickly set up targeted lists of customers, send them messages on a variety of issues, and track responses. A utility staff member with Administrator privileges can select from several options to send messages including sending email messages, texts, or automated calls. Contact information (email, mobile phone numbers, home phone numbers) include those provided directly by end-customers through the WaterSmart Customer Portal, recorded by utility staff in the WaterSmart Utility Dashboard, and imported by WaterSmart from a pre-existing utility list. Utility staff sending outbound messages must select which types of contact information should be used for that message.

Attachment: First Amendment to WaterSmart_Signedx2 (2649 : WaterSmart Amendment)



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

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

APPROVE PACIFIC GAS AND ELECTRIC COMPANY AGREEMENT TO UNDERGROUND DRY UTILITIES FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company Agreement to underground dry utilities at the intersection of Dewitt and Spring Avenues for the Hale Avenue Extension Project for a not to exceed amount of \$157,883.

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, the Morgan Hill City Council moved to approve a Service Agreement for Design Professionals with Mark Thomas & Company in 2017 to prepare design plans for the Hale Avenue Extension Project, 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.

In 2018, Mark Thomas's contract was amended to include utility undergrounding services. Thus, applications to underground dry utilities were submitted to Pacific Gas and Electric Company, (PGE) in September 2018 for the Hale Avenue Extension Project. Two applications were submitted to allow for flexibility in the event that the project needed to be built in phases. The first application, Phase 1, included undergrounding at the Dewitt/Spring intersection, see PGE agreement (attachment 1) and PGE design plans (attachment 2), which are the subject of this staff report. The dry utility undergrounding work includes electric, cable, and telephone lines. PGE's scope of work includes: inspection of underground conduits/structures, pole removal, installing cables/connectors, and energizing. Underground conduits and vaults will be the

responsibility of the Hale Avenue Extension contractor. This is common practice and less expensive than having PGE perform this work. The second application, Phase 2, includes undergrounding at the Main/Hale intersection, Warren Avenue and Nob Hill Avenue. The City should receive these plans shortly. Staff expects this portion to be more expensive due to the complexity and quantity of overhead lines to be relocated. A separate staff report will then be prepared for phase 2.

The design plans are 98% complete and the environmental permits have been secured for the project. Staff is currently working with the VTA to execute an agreement for the Measure B funds programmed for the project. The current Measure B allocation amount for the project is \$13.5 million. The Measure B funds will be secured prior to bidding the project. The City is also working with Valley Water to coordinate project timelines with the Upper Llagas Flood Control Project Phase 2A, which will have many overlapping project sections with the Hale Avenue Extension Project near Main Avenue. It is estimated that both projects will be ready to bid in May 2020 with construction commencing in summer 2020.

Staff is therefore recommending that the City Council approve the PGE agreement so the dry utilities at the Dewitt/Spring intersection can be relocated underground to eliminate potential hazards and remove blight as part of this project.

COMMUNITY ENGAGEMENT: Inform

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. In addition, the 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:

The City Council could decide not to execute the PGE agreement at this time. This is not recommended as undergrounding dry utilities is normally required for development projects and typically done on other Capital Improvement Projects. Undergrounding could be done at a later date, but it would be less efficient and thus more costly.

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 work, including utility undergrounding for \$92,860.

On April 17, 2019, City Council approved a second amendment with Mark Thomas & Company for increased services, which include bidding and construction services for

\$88,700.

FISCAL AND RESOURCE IMPACT:

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 approximately \$20 million from Traffic Impact Fund (309), project #546007. The VTA's Measure B Grant will contribute at least \$13.5 million towards the project.

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. Attachment 1-PG&E Agreement-Phase 1
2. Attachment 2- PGE Plans-Phase 1



January 15, 2020

David Gittleson
City of Morgan Hill, A Government Agency
17575 Peak Ave.
MORGAN HILL, CA 95037

RE: Contract ID: 1249774: Rule 20 Part 2

Dear David Gittleson,

Enclosed are gas and/or electric agreements for your project located at:

SPRING & DEWITT, MORGAN HILL, 95037

This letter summarizes the agreements for this project.

	Non-Refundable Payment	Refundable Option*	50% Discount Option*
Electric Overhead to Underground Conversion (20C)	\$157,882.57	\$0.00	\$0.00
Less Credit (Engineering Advance, etc.)	\$2,500.00	\$0.00	\$0.00
TOTAL **	\$155,382.57	\$0.00	\$0.00
TOTAL PAYMENT DUE	\$155,382.57	OR	\$155,382.57

* Only applies to Rule 15 Refundable Amounts. Amount shown is less credit for associated Applicant work.

** The Income Tax Component of Contribution (ITCC) is included in the above charges when applicable.

Changes to the agreement, either to any of the terms or to the amount owing, are not permitted, and any change or interlineations voids the agreement. The payment of any amount less than the full amount shown will be deposited by PG&E, but PG&E will not begin any work on this contract until the amount is paid in full. The contract shall be deemed effective the date a fully executed copy is received by PG&E. Please allow 45 days from PG&E's receipt of the Agreement for construction to commence.

If the agreement is not returned to PG&E within 90 days of the date of this letter, the proposed agreement is canceled and PG&E may need to re-estimate the job.

PG&E is committed to providing timely and efficient service and we look forward to continuing to work with you on this and future projects.

Should you have any questions regarding these contracts, please contact your project manager Ca Huynh at 4082991040 or CPH4@pge.com.

To complete your contract ONLINE

- Follow the instructions provided with your electronic contract
- Submit payment at pge.com/contractpayments

To complete your contract BY MAIL

- Make checks payable to: PGE or Pacific Gas and Electric
- Complete, sign and retain one copy of the agreement for your records
- Complete, sign and return one copy of the agreement with your payment to:
PG&E CFM/PPC DEPARTMENT
PO BOX 997340
Sacramento, CA 95899-7340

Sincerely,

Steve Taylor

Steve Taylor
Sr New Business Rep



114993896E

Ref: Contract ID: 1249774: SPRING & DEWITT, MORGAN HILL, 95037



**Pacific Gas and Electric Company
Agreement to Perform
Tariff Schedule Related Work**

DISTRIBUTION:

- ☐ APPLICANT (Original)
☐ DIVISION (Original)
☐ ACCTG. SVCS.

REFERENCES:

Notification # 114993896
Contract # 1249774
R20-PM # 31438232

4.a

CITY OF MORGAN HILL, A Government Agency (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefor, subject to the following conditions:

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

LOCATION: SPRING & DEWITT, MORGAN HILL, 95037

DESCRIPTION OF WORK: Rule 20C - Underground existing overhead electric facilities

Engineering & Administrative Costs		\$39,186.90
Value of Applicant Design Work	(+)	\$0.00
Cost of Additional Applicant Design Plan Checks	(+)	\$0.00
Value of 20C Underground System	(+)	\$0.00
Tie-In of 20C by PG&E	(+)	\$63,601.39
PG&E Land Rights Costs	(+)	\$0.00
Inspection Fees	(+)	\$823.63
Value of 20C Trench & Excavation	(+)	\$32,268.04
Value of 20C Conduits & Substructures	(+)	\$17,689.57
Rule 20C Trench Permits Obtained by PG&E	(+)	\$1,000.00
less Salvage & Depreciation for Overhead Facilities	(-)	\$0.00
SUB TOTAL	(=)	\$154,569.54
plus ITCC @ 24%	(+)	\$37,096.69
plus Cost to Remove Overhead Line by PG&E	(+)	\$16,173.96
less 20C Underground System Installed by Applicant	(-)	\$0.00
less 20C Trench & Excavation Provided by Applicant	(-)	\$32,268.04
less 20C Conduits & Substructures Installed by Applicant	(-)	\$17,689.57
less Value of Applicant Design Work	(-)	\$0.00
Electric Rule 20C Cash Payment	(=)	\$157,882.57



114993896E

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of One Hundred Fifty-Seven Thousand Eight Hundred Eighty-Two Dollars And Fifty-Seven Cents (\$157,882.57)

4.a

Upon completion of requested work, ownership shall vest in: ☒ PG&E ☐ Applicant

Executed this _____ day of _____

CITY OF MORGAN HILL, A Government Agency

PACIFIC GAS & ELECTRIC COMPANY

Applicant

By: _____

By: Steve Taylor

Christina Tuner
Print/Type/Name

Steve Taylor

Title: INDIVIDUAL

Title: Sr New Business Rep

Mailing Address: 17575 PEAK AVE.
MORGAN HILL CA 95037

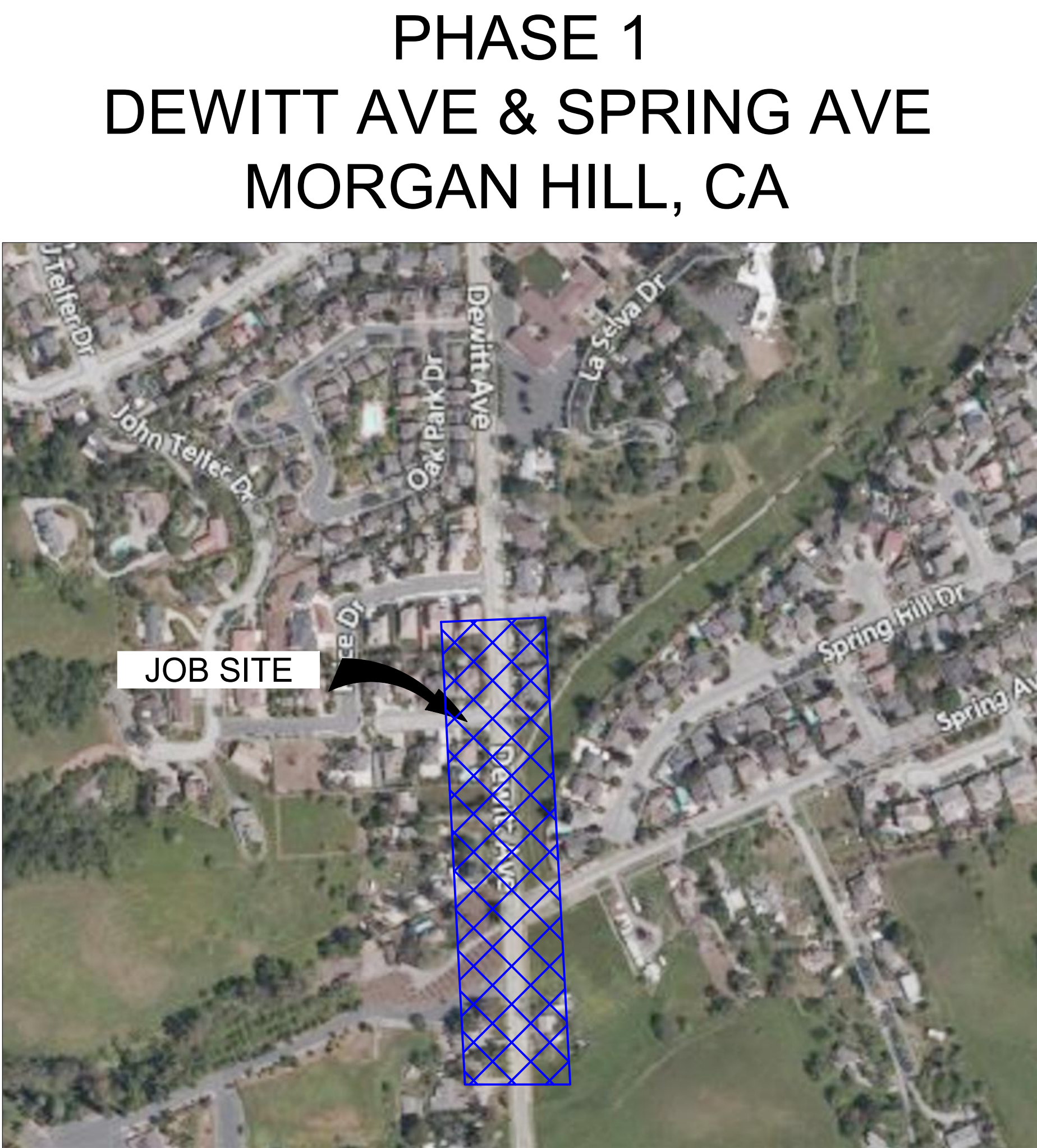


114993896E

A

PHASE 1

PHASE 1
DEWITT AVE & SPRING AVE
MORGAN HILL, CA



PHASE 1
VE & SP
GAN HIL

Devitt Ave
Oak Park Dr
La Selva Ave

VICINITY MAP
N.T.S



PHASE 1
T AVE & SPRIN
ORGAN HILL, C

VICINITY MAP
N.T.S

UTILITY APPROVALS

PHASE 1

DEWITT AVE & SPRING AVE

MORGAN HILL, CA

VICINITY MAP
N.T.S

UTILITY APPROVALS			
UTILITY	APPROVED BY	DATE	REFERENCE #
PG&E ELECTRIC	Robin Wibeto	10/2/19	PM: 31438232
PG&E GAS	Not Applicable	Not Applicable	Not Applicable
FRONTIER			
COMCAST			

CONSTRUCTION NOTES:

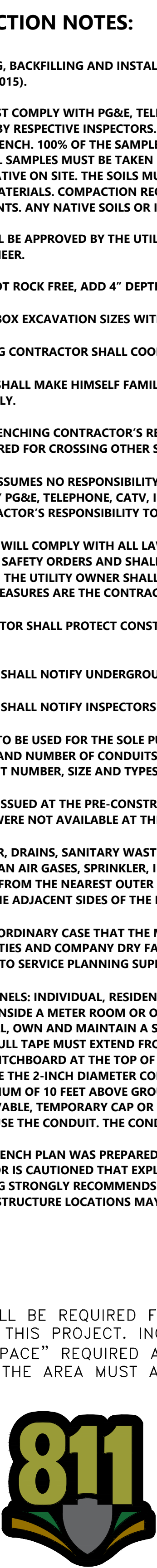
- ## CONSTRUCTION NOTES:
1. ALL TRENCHING, BACKFILLING AND INSTALLATION BY CONTRACTOR MUST COMPLY WITH PG&E UO STANDARD 55453 (EFFECTIVE DATE 7-31-2015).
 2. ALL WORK MUST COMPLY WITH PG&E, TELEPHONE, CATV STANDARDS AND PRACTICES. ALL WORK MUST BE INSPECTED AND APPROVED BY RESPECTIVE INSPECTORS. RANDOM SOIL SAMPLES SHALL BE TAKEN FROM A MINIMUM OF THREE LOCATIONS PER 1,000' OF TRENCH. 100% OF THE SAMPLE MUST PASS THROUGH A ½" SIEVE AND 75% MUST PASS THROUGH A #4 SCREEN. ADDITIONAL SAMPLES MUST BE TAKEN IF EXISTING SOIL CONDITIONS CHANGE AND IS TO BE AT THE DISCRETION OF THE PG&E REPRESENTATIVE ON SITE. THE SOILS MUST NOT CONTAIN CLODS LARGER THE ½" IF TO BE USED AS SHADING, BEDDING OR LEVELING MATERIALS. COMPACTION REQUIREMENTS MUST MEET ANY APPLICABLE PG&E FEDERAL, STATE, COUNTY OR LOCAL REQUIREMENTS. ANY NATIVE SOILS OR IMPORT MATERIALS USED MUST NOT HINDER THOSE EFFORTS.
 3. BACKFILL SHALL BE APPROVED BY THE UTILITY COMPANIES AND THE CITY. COMPACTION WILL BE TESTED AND PASSED BY THE SOILS ENGINEER.
 4. IF SOIL IS NOT ROCK FREE, ADD 4" DEPTH OF TRENCH FOR SAND BEDDING.
 5. VERIFY SPLICE BOX EXCAVATION SIZES WITH SUPPLIER(S).
 6. THE TRENCHING CONTRACTOR SHALL COORDINATE THE UTILITY COMPANIES' INSTALLATION.
 7. CONTRACTOR SHALL MAKE HIMSELF FAMILIAR WITH THE PROJECT IMPROVEMENT PLANS AND CONDUCT HIS WORK ACCORDINGLY.
 8. IT IS THE TRENCHING CONTRACTOR'S RESPONSIBILITY TO PROTECT IN PLACE ALL EXISTING FACILITIES. NO EXTRA PAYMENT WILL BE CONSIDERED FOR CROSSING OTHER SYSTEMS.
 9. PMG DESIGN ASSUMES NO RESPONSIBILITY FOR THE PROJECT CONDITIONS. THESE DRAWINGS WERE PREPARED USING DATA SUPPLIED BY PG&E, TELEPHONE, CATV, IMPROVEMENT PLANS AND THE CITY'S VARIOUS "AS-BUILT" INFORMATION. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO PHYSICALLY REVIEW THE PROJECT PRIOR TO SUBMITTING HIS BID.
 10. CONTRACTOR WILL COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS. CONTRACTOR SHALL BE FAMILIAR WITH OSHA INDUSTRIAL SAFETY ORDERS AND SHALL CONDUCT HIS WORK ACCORDINGLY. WHEN WORKING NEAR ENERGIZED OR "HOT" EQUIPMENT, THE UTILITY OWNER SHALL BE NOTIFIED TO SUPPLY THE APPROPRIATE MAN POWER. PUBLIC SAFETY AND TRAFFIC CONTROL MEASURES ARE THE CONTRACTOR'S RESPONSIBILITY.
 11. THE CONTRACTOR SHALL PROTECT CONSTRUCTION STAKING. HE SHALL COORDINATE STAKING WITH THE PROJECT'S CIVIL ENGINEER.
 12. CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (USA) TWO WORKING DAYS PRIOR TO START OF WORK.
 13. CONTRACTOR SHALL NOTIFY INSPECTORS OF ANY POTENTIAL CONFLICTS PRIOR TO START OF WORK.
 14. THIS PLAN IS TO BE USED FOR THE SOLE PURPOSE OF DIGGING THE JOINT TRENCH. SEE PG&E, AT&T, AND COMCAST PLANS FOR EXACT SIZE AND NUMBER OF CONDUITS INSTALLED IN THE JOINT TRENCH. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THE CORRECT NUMBER, SIZE AND TYPES OF CONDUITS ARE INSTALLED PER THE ENGINEERED PLANS BY EACH UTILITY.
 15. NOTE: PLANS ISSUED AT THE PRE-CONSTRUCTION MEETING MAY BE SUBJECT TO REVISIONS, IF FINAL PLANS FROM EACH UTILITY COMPANY WERE NOT AVAILABLE AT THE START OF CONSTRUCTION.
 16. WATER, SEWER, DRAINS, SANITARY WASTE, FUELS (INCLUDING DIESEL AND GASOLINE), OIL, PROPANE AND OTHER VOLATILE HEAVIER THAN AIR GASES, SPRINKLER, IRRIGATION, STEAM AND OTHER "WET" FACILITIES SHALL MAINTAIN A MINIMUM OF THREE FEET FROM THE NEAREST OUTER SURFACE OF PG&E FACILITIES WITH NO LESS THAN ONE FOOT OF EARTH (SOIL BARRIER) BETWEEN THE ADJACENT SIDES OF THE INDIVIDUAL TRENCHES.
 17. IN THE EXTRAORDINARY CASE THAT THE MINIMUM THREE FOOT HORIZONTAL SEPARATION CANNOT BE ATTAINED BETWEEN "WET" UTILITIES AND COMPANY DRY FACILITIES, A VARIANCE MAY BE APPROVED BY THE LOCAL INSPECTION SUPERVISOR AND SUBMITTED TO SERVICE PLANNING SUPPORT PROGRAM MANAGER FOR APPROVAL.
 18. ALL METER PANELS: INDIVIDUAL, RESIDENTIAL, OR NONRESIDENTIAL APPLICANTS WITH A METER PANEL RATING OF ANY SIZE, INSTALLED INSIDE A METER ROOM OR OTHER STRUCTURE, MUST FOLLOW ALL OF THE REQUIREMENTS DESCRIBED BELOW.
 - A. INSTALL, OWN AND MAINTAIN A SEPARATE, NOMINAL, 2-INCH DIAMETER CONDUIT WITH PULL TAPE INSIDE. THE CONDUIT AND PULL TAPE MUST EXTEND FROM THE OUTSIDE SURFACE OF THE BUILDING AND TERMINATE OUTSIDE THE METER PANEL OR SWITCHBOARD AT THE TOP OF THE METER SECTION.
 - B. ENSURE THE 2-INCH DIAMETER CONDUIT AND PULL TAPE EXIT THE OUTSIDE OF THE BUILDING A MINIMUM OF 8 FEET AND A MAXIMUM OF 10 FEET ABOVE GROUND. THE OPEN END OF THE CONDUIT THAT IS EXPOSED TO THE OUTSIDE MUST HAVE A REMOVABLE, TEMPORARY CAP OR PLUG.
 - C. DO NOT USE THE CONDUIT. THE CONDUIT IS FOR PG&E'S METERING EQUIPMENT ONLY.
 19. THIS JOINT TRENCH PLAN WAS PREPARED BASED ON TOPOGRAPHICAL SURVEY AS PROVIDED BY A CIVIL ENGINEER. THE CONTRACTOR IS CAUTIONED THAT EXPLORATORY WORK IS NECESSARY TO DETERMINE THE ACTUAL LOCATION OF ANY EXISTING UTILITY. PMG STRONGLY RECOMMENDS THAT ALL UTILITIES BE PHYSICALLY LOCATED ON THE SITE BEFORE THE ONSET OF SITE WORK. SUBSTRUCTURE LOCATIONS MAY REQUIRE FIELD ADJUSTMENT TO COMPENSATE FOR ACTUAL EXISTING UTILITY LOCATIONS.

CONSTRUCTION NOTES:

1. ALL TRENCHING, BACKFILLING AND INSTALLATION BY CONTRACTOR SHALL BE IN ACCORDANCE WITH THE CITY OF CHICAGO (DATE 7-31-2015).
2. ALL WORK MUST COMPLY WITH PG&E, TELEPHONE, CATV STANDARDS. APPROVED BY RESPECTIVE INSPECTORS. RANDOM SOIL SAMPLES AT 1,000' OF TRENCH. 100% OF THE SAMPLE MUST PASS THROUGH NO. 100 SIEVE. ADDITIONAL SAMPLES MUST BE TAKEN IF EXISTING SOIL CONDITIONS ARE SUSPECT. REPRESENTATIVE ON SITE. THE SOILS MUST NOT CONTAIN CLAY, COARSE FILLING MATERIALS. COMPACTION REQUIREMENTS MUST MEET CITY OF CHICAGO REQUIREMENTS. ANY NATIVE SOILS OR IMPORT MATERIALS USED MUST BE APPROVED BY THE CITY OF CHICAGO SOILS ENGINEER.
3. BACKFILL SHALL BE APPROVED BY THE UTILITY COMPANIES AND THE CITY OF CHICAGO SOILS ENGINEER.
4. IF SOIL IS NOT ROCK FREE, ADD 4" DEPTH OF TRENCH FOR SAND OR GRAVEL.
5. VERIFY SPLICE BOX EXCAVATION SIZES WITH SUPPLIER(S).
6. THE TRENCHING CONTRACTOR SHALL COORDINATE THE UTILITY LOCATIONS WITH THE CITY OF CHICAGO.
7. CONTRACTOR SHALL MAKE HIMSELF FAMILIAR WITH THE PROJECT AND THE CITY OF CHICAGO ACCORDINGLY.
8. IT IS THE TRENCHING CONTRACTOR'S RESPONSIBILITY TO PROTECT ALL EXISTING UTILITIES. BE CONSIDERED FOR CROSSING OTHER SYSTEMS.
9. PMG DESIGN ASSUMES NO RESPONSIBILITY FOR THE PROJECT CONTRACTOR'S DESIGN. SUPPLIED BY PG&E, TELEPHONE, CATV, IMPROVEMENT PLANS SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO PHYSICALLY REVIEW THE PROJECT AND THE CITY OF CHICAGO.
10. CONTRACTOR WILL COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS OF THE CITY OF CHICAGO. INDUSTRIAL SAFETY ORDERS AND SHALL CONDUCT HIS WORK IN ACCORDANCE WITH THE CITY OF CHICAGO. EQUIPMENT, THE UTILITY OWNER SHALL BE NOTIFIED TO SUPPORT THE PROJECT. CONTROL MEASURES ARE THE CONTRACTOR'S RESPONSIBILITY TO PROTECT THE PROJECT AND THE CITY OF CHICAGO.
11. THE CONTRACTOR SHALL PROTECT CONSTRUCTION STAKING. THE CITY OF CHICAGO SOILS ENGINEER.
12. CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (USA) BEFORE ANY TRENCHING.
13. CONTRACTOR SHALL NOTIFY INSPECTORS OF ANY POTENTIAL CONFLICTS WITH EXISTING UTILITIES.
14. THIS PLAN IS TO BE USED FOR THE SOLE PURPOSE OF DIGGING TRENCHES. THE EXACT SIZE AND NUMBER OF CONDUITS INSTALLED IN THE JOINTS SHALL BE THE CITY OF CHICAGO. THE CORRECT NUMBER, SIZE AND TYPES OF CONDUITS ARE IN THE CITY OF CHICAGO.
15. NOTE: PLANS ISSUED AT THE PRE-CONSTRUCTION MEETING MAY BE SUBJECT TO CHANGE. COMPANY WERE NOT AVAILABLE AT THE START OF CONSTRUCTION.
16. WATER, SEWER, DRAINS, SANITARY WASTE, FUELS (INCLUDING GAS), AND HEAVIER THAN AIR GASES, SPRINKLER, IRRIGATION, STEAM AND CONDENSATE, SHALL BE AT LEAST THREE FEET FROM THE NEAREST OUTER SURFACE OF PG&E FACILITY. THE CITY OF CHICAGO. BETWEEN THE ADJACENT SIDES OF THE INDIVIDUAL TRENCHES.
17. IN THE EXTRAORDINARY CASE THAT THE MINIMUM THREE FOOT MINIMUM CLEARANCE FOR "WET" UTILITIES AND COMPANY DRY FACILITIES, A VARIANCE MAY BE REQUESTED. SUBMITTED TO SERVICE PLANNING SUPPORT PROGRAM MANAGER.
18. ALL METER PANELS: INDIVIDUAL, RESIDENTIAL, OR NONRESIDENTIAL, SHALL BE INSTALLED INSIDE A METER ROOM OR OTHER STRUCTURE, MUST BE PROTECTED BY A. INSTALL, OWN AND MAINTAIN A SEPARATE, NOMINAL, 2-INCH DUCT, AND PULL TAPE MUST EXTEND FROM THE OUTSIDE SURFACE OF THE DUCT OR SWITCHBOARD AT THE TOP OF THE METER SECTION.
- B. ENSURE THE 2-INCH DIAMETER CONDUIT AND PULL TAPE SHALL BE INSTALLED AT A MAXIMUM OF 10 FEET ABOVE GROUND. THE OPEN END OF THE CONDUIT SHALL BE REMOVABLE, TEMPORARY CAP OR PLUG.
- C. DO NOT USE THE CONDUIT. THE CONDUIT IS FOR PG&E'S METER PANELS.
19. THIS JOINT TRENCH PLAN WAS PREPARED BASED ON TOPOGRAPHIC DATA. THE CONTRACTOR IS CAUTIONED THAT EXPLORATORY WORK IS NOT THE CITY OF CHICAGO. PMG STRONGLY RECOMMENDS THAT ALL UTILITIES BE LOCATED BY THE CITY OF CHICAGO. WORK. SUBSTRUCTURE LOCATIONS MAY REQUIRE FIELD ADJUSTMENTS. LOCATIONS.

NOTE:

PG&E/PUE WILL BE REQUIRED FOR ALL UTILITIES IN THIS PROJECT, INCLUDING THE "WORKING SPACE" REQUIRED AROUND ALL EQUIPMENT. THE AREA MUST ALSO BE LEVEL.

[illegible]

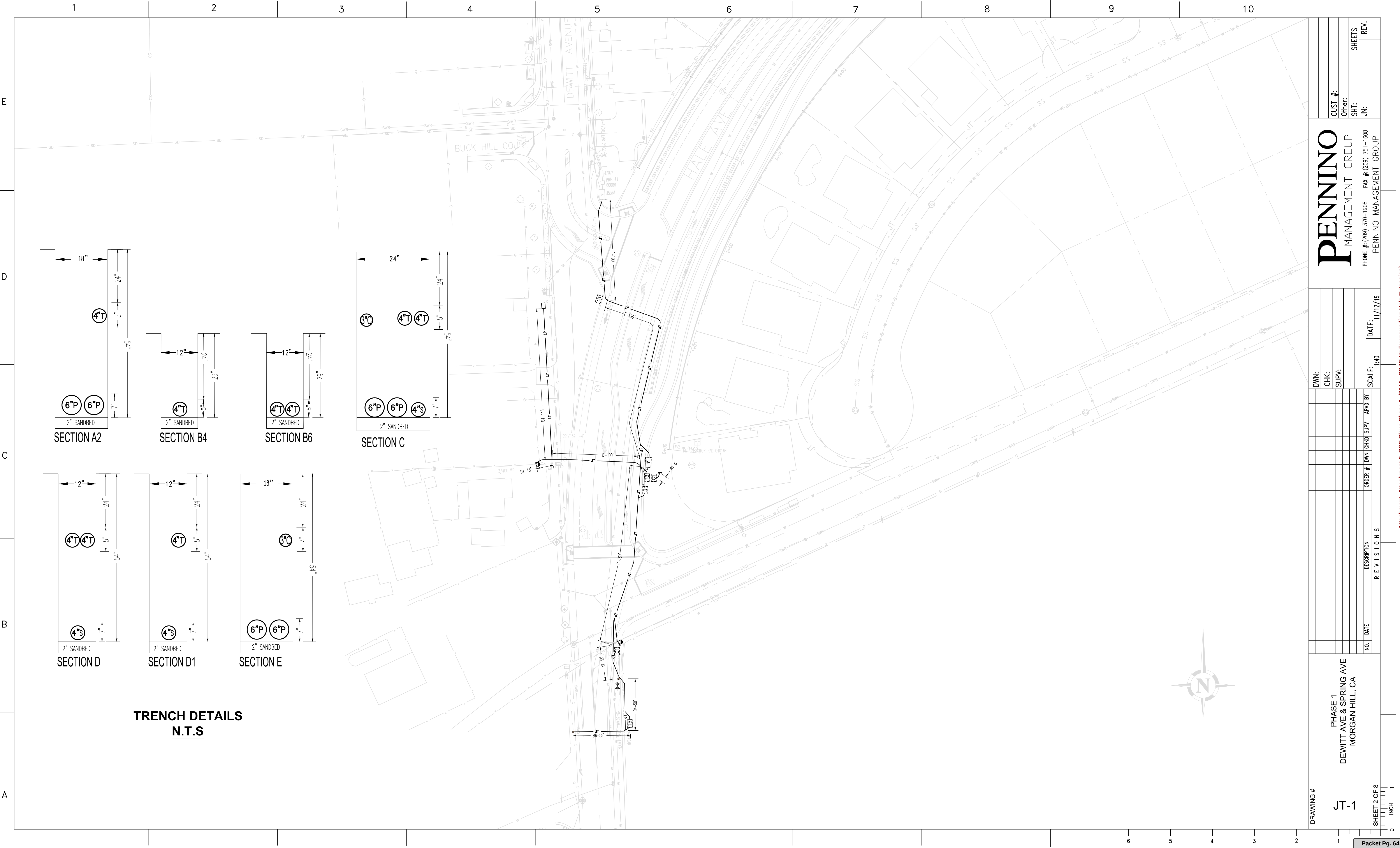
GENERAL NOTES:

- # GENERAL NOTES:
1. THE PREFERRED TRENCH LOCATION IS IN A PUBLIC UTILITY EASEMENT (PUE).
 2. ALL DEPTHS AND RESULTING COVER REQUIREMENTS ARE MEASURED FROM FINAL GRADE.
 3. COVER, CLEARANCES AND SEPARATION SHALL BE AS GREAT AS PRACTICABLE UNDER THE CIRCUMSTANCES, BUT UNDER NO CIRCUMSTANCES SHALL BE LESS THAN THE MINIMUM COVER, CLEARANCE, AND SEPARATION REQUIREMENTS SET FORTH IN GENERAL ORDER 128 AND 49CFR 192.321, 49CFR 192.325, AND 49CFR 192.327. ALL FACILITIES SHALL BE ANCHORED IN PLACE PRIOR TO COMPACTION, OR OTHER MEANS SHALL BE TAKEN TO ENSURE NO MOTION OF THE FACILITIES. DIMENSIONAL REQUIREMENTS FOR SHADING, LEVELING, AND BACKFILLING SHALL BE DETERMINED SUBSEQUENT TO COMPACTION.
 4. TRENCH DIMENSIONS SHOWN ARE TYPICAL. TRENCH SIZES AND CONFIGURATIONS MAY VARY DEPENDING UPON OCCUPANCY AND/OR FIELD CONDITIONS. TRENCH SIZE AND CONFIGURATION MUST AT ALL TIMES BE CONSTRUCTED IN A MANNER THAT ENSURES PROPER CLEARANCES AND COVER REQUIREMENTS ARE MET. ANY "CHANGE" TO THE TRENCH WIDTH AND CONFIGURATIONS AS SHOWN IN THIS EXHIBIT MUST BE DESIGNED TO ENSURE THIS REQUIREMENT.
 5. IT IS PREFERRED TO HAVE NON-PG&E OWNED STREETLIGHTS AT A LEVEL OTHER THAN THE GAS OR ELECTRIC LEVEL. NON-PG&E OWNED STREETLIGHTS MAY BE AT THE ELECTRICAL LEVEL OF THE TRENCH AS LONG AS MINIMUM CLEARANCES ARE PROVIDED AND COMPLY WITH ALL SPECIAL NOTES FOR A JOINT TRENCH WITH A SECOND ELECTRIC UTILITY.
 6. NON-UTILITY FACILITIES ARE NOT ALLOWED IN ANY JOINT UTILITY TRENCH, E.G., IRRIGATION CONTROL LINES, BUILDING FIRE ALARM SYSTEMS, PRIVATE TELEPHONE SYSTEMS, OUTDOOR ELECTRICAL CABLE, ETC.
 7. WHEN COMMUNICATION DUCTS ARE INSTALLED, A MINIMUM OF 12" RADIAL SEPARATION SHALL BE MAINTAINED FROM GAS FACILITIES. EXCEPTION: WITH MUTUAL AGREEMENT, WHEN 4-INCH DIAMETER OR SMALLER GAS PIPE IS INSTALLED, THE SEPARATION MAY BE REDUCED TO NOT LESS THAN 6 INCHES.
 8. PROVIDE SEPARATION FROM TRENCH WALL AND OTHER FACILITIES SUFFICIENT TO ENSURE PROPER COMPACTION.
 9. MAINTAIN PROPER SEPARATION BETWEEN PG&E FACILITIES AND "WET" UTILITY LINES AS DESCRIBED IN UO STANDARD 55453. THE MINIMUM ALLOWABLE HORIZONTAL SEPARATION BETWEEN COMPANY FACILITIES AND "WET" FACILITIES IS 3' WITH A MINIMUM OF 1' OF UNDISTURBED EARTH OR THE INSTALLATION OF A SUITABLE BARRIER BETWEEN THE FACILITIES. IF A 3' HORIZONTAL SEPARATION CANNOT BE ATTAINED BETWEEN "WET" UTILITIES AND COMPANY DRY FACILITIES, A VARIANCE MAY BE APPROVED BY THE LOCAL INSPECTION SUPERVISOR AND SUBMITTED TO THE SERVICE PLANNING SUPPORT PROGRAM MANAGER FOR APPROVAL. SEPARATIONS OF 1' OR LESS ARE NOT PERMISSIBLE AND WILL NOT BE ALLOWED. THE COMPANY MAY AGREE TO WAIVE THE MINIMUM 3' SEPARATION REQUIREMENT AT THE REQUEST OF AN APPLICANT IF WARRANTED AND THE NEED IS JUSTIFIED. THE REQUEST FOR A WAIVER MUST:
 - BE MADE IN WRITING AND SUBMITTED TO THE COMPANY ADE DURING THE PLANNING AND DESIGN PHASE OF THE PROJECT.
 - CLEARLY DESCRIBE THE CONDITIONS NECESSITATING THE WAIVER,
 - INCLUDE A PROPOSED DESIGN AND INCLUDE A DESIGN FOR A BARRIER BETWEEN THE "WET" UTILITIES AND COMPANY DRY FACILITIES IN THE EVENT 1' OF UNDISTURBED EARTH CANNOT BE MAINTAINED. NOTE: DRAIN LINES CONNECTED TO DOWNSPOUTS OF BUILDINGS ARE CONSIDERED A "WET" UTILITY FOR THE PURPOSES OF THIS STANDARD.
 10. SEPARATIONS SHALL BE MAINTAINED ABOVEGROUND TERMINATION POINTS.
 11. PROCEDURES FOR APPROVING NATIVE BACKFILL FOR SHADING OF PG&E GAS FACILITIES:
 - RANDOM SOIL SAMPLES SHALL BE TAKEN FROM A MINIMUM OF 3 LOCATIONS PER 1,000' OF TRENCH. 100% OF THE SAMPLE MUST PASS THROUGH A 1/2" SIEVE AND 75% MUST PASS THROUGH A #4 SCREEN. ADDITIONAL SAMPLES MUST BE TAKEN IF EXISTING SOIL CONDITIONS CHANGE AND IS TO BE AT THE DISCRETION OF THE PG&E REPRESENTATIVE ON SITE.
 - THE SOILS MUST NOT CONTAIN ANY ROCKS THAT HAVE SHARP EDGES OR THAT MAY OTHERWISE BE ABRASIVE.
 - THE SOILS MUST NOT CONTAIN CLODS LARGER THE 1/2" IF TO BE USED AS SHADING, BEDDING OR LEVELING MATERIALS.
 - COMPACTION REQUIREMENTS MUST MEET ANY APPLICABLE PG&E FEDERAL, STATE, COUNTY OR LOCAL REQUIREMENTS.
 - AT NO TIME SHALL THE OVER SATURATION OF NATIVE SOILS BE USED TO ACHIEVE THESE REQUIREMENTS.
 - THE SIEVES AND SCREENS SHALL BE:
 - 1/2" SIEVE: 8" DIAMETER BY 2" DEEP, STAINLESS STEEL MESH SCREEN.
 - #4 SCREEN: 8" DIAMETER BY 2" DEEP, STAINLESS STEEL MESH SCREEN.
 12. PROCEDURES FOR APPROVING NATIVE BACKFILL FOR SHADING AT PG&E LOCATIONS FACILITIES:
 - RANDOM SOIL SAMPLES SHALL BE TAKEN FROM A MINIMUM OF 3 LOCATIONS PER 1,000' OF TRENCH. ADDITIONAL SAMPLES MUST BE TAKEN IF EXISTING SOIL CONDITIONS CHANGE AND ARE TO BE TAKEN AT THE DISCRETION OF THE PG&E REPRESENTATIVE ON SITE.
 - SHADING MATERIAL CONTAINING LARGE ROCK, PAVING MATERIAL, CINDERS, SHARPLY ANGULAR SUBSTANCES, OR CORROSIVE MATERIAL SHALL NOT BE PLACED IN THE TRENCH WHERE SUCH MATERIAL MAY DAMAGE THE CONDUITS AND/OR PREVENT PROPER COMPACTION OVER OR AROUND THE CONDUITS.
 - NATIVE SOILS CONTAINING CLODS NOT TO EXCEED 6" IN DIAMETER MAY BE INCLUDED IN THE SHADING MATERIAL PROVIDED THE CLODS WOULD BEAD BREAKABLE BY HAND. NOTE: SOILS CONSISTING PRIMARILY OF ADOBE, HARD COMPACT (DENSE) CLAY, AND BAY MUDS SHALL NOT BE USED AS SHADING MATERIAL.
 - AT NO TIME SHALL THE OVER SATURATION OF NATIVE SOILS BE USED TO ACHIEVE THESE REQUIREMENTS.
 - REFER TO ENGINEERING DOCUMENT 062288, ITEM 13 ON PAGE 2.
 13. COMPETENT NATIVE SOILS ARE PREFERRED TO BE USED FOR SHADING, BEDDING, AND BACKFILLING THROUGHOUT THE TRENCH.
 - WHERE NATIVE SOILS EXCEED 1/2" MINUS AND/OR WHERE GAS IS TO BE PLACED AT THE BOTTOM OF A TRENCH IN AREAS THAT EXCEED 1/2" MINUS SOIL CONDITIONS, OR WHERE THE BOTTOM OF A TRENCH IS CONSIDERED TO CONSIST OF HARD PAN, PG&E APPROVED 1/2" MINUS IMPORT MATERIAL SHALL BE USED FOR SHADING AND/OR BEDDING OF GAS FACILITIES.
 - PG&E APPROVED IMPORT MATERIAL IS PER CGT ENGINEERING GUIDELINE 4123.
 - IF A LEVELING COURSE IS REQUIRED FOR GAS FACILITIES, THE USE OF NATIVE SOILS IS PREFERRED, BUT IF 1/2" MINUS CONDITIONS ARE NOT ATTAINABLE WITH NATIVE SOILS, THEN THE USE OF PG&E APPROVED IMPORT MATERIALS IS REQUIRED. BEDDING UNDER GAS FACILITIES WILL BE THE MINIMUM OF 2" OF COMPACTED 1/2" MINUS NATIVE SOILS OR PG&E APPROVED IMPORT MATERIAL.
 - FOR ELECTRIC FACILITIES, REFER TO NOTE 12. THIS APPLIES TO LEVELING COURSES AS WELL AS SHADING.
 - THE MINIMUM PG&E APPROVED BEDDING MATERIAL MAY BE INCREASED AT THE DISCRETION OF PG&E WHEN WARRANTED BY EXISTING FIELD CONDITIONS (E.G., ROCKY SOILS, HARD PAN, ETC.)
 - THE USE OF ANY IMPORTED MATERIAL FOR BACKFILLING PURPOSES SHALL BE LIMITED TO THOSE SITUATIONS WHEN NATIVE SOILS DO NOT ALLOW FOR REQUIRED COMPACTION.
 14. THE APPLICANT IS RESPONSIBLE FOR THE REMOVAL OF EXCESS SPOIL AND ASSOCIATED COSTS.
 15. SEPARATION BETWEEN GAS FACILITIES AND ELECTRIC FACILITIES MAY BE REDUCED TO 6" WHEN CROSSING.
 16. SERVICE SADDLES ARE THE PREFERRED SERVICE FITTINGS FOR USE THROUGHOUT THE JOINT TRENCH PROJECT. ALL PROJECTS WILL BE DESIGNED AND ESTIMATED USING SERVICE SADDLES. HOWEVER, SERVICE TEES MAY BE USED IF ALL CLEARANCES, SEPARATION, AND COVERAGE REQUIREMENTS ARE MAINTAINED.
 17. CONTRACTOR TO INCREASE METER SPACING AS NECESSARY WHEN EARTHQUAKE VALVES OR OTHER ADDITIONAL SAFETY EQUIPMENT ARE REQUIRED. EARTHQUAKE VALVES ARE REQUIRED IN SOME AREAS AND ARE NOT PART OF PG&E/PMG SCOPE. THIS INFORMATION CAN BE FOUND ON BUILDING MECHANICAL ENGINEER'S PLANS. PG&E STANDARD METER SPACING REQUIREMENTS DO NOT INCLUDE CLEARANCE FOR EARTHQUAKE VALVES.

DRAWING #	COVER	SHEET 1 OF 8	PHASE 1 DEWITT AVE & SPRING AVE MORGAN HILL, CA	PENNINO MANAGEMENT GROUP PHONE # (209) 370-1908 FAX # (209) 751-1008 PENNINO MANAGEMENT GROUP																					
				CUST #: Other: SHT:	RE:																				
				DWN:																					
				CHK:																					
				SUPV:																					
				SCALE:		NO SCALE		DATE:		11/12/19															
				NO.		DATE		DESCRIPTION		R E V I S I O N S															
				ORDER #		DWN		CHKD		SUPV		APVD		BY											

DRY UTILITIES

JOINT TRENCH COMPOSITE



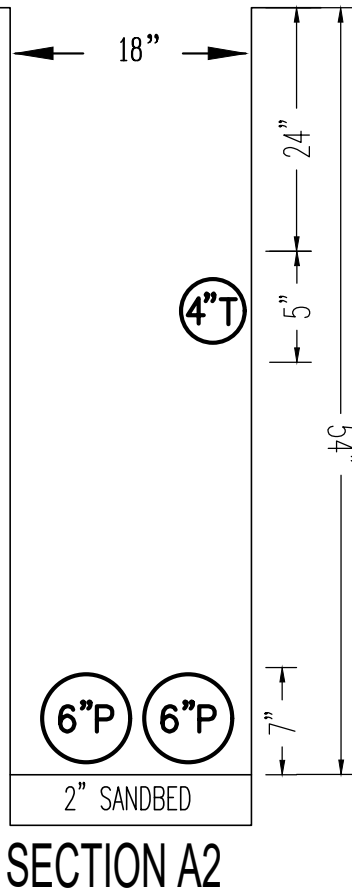
E

D

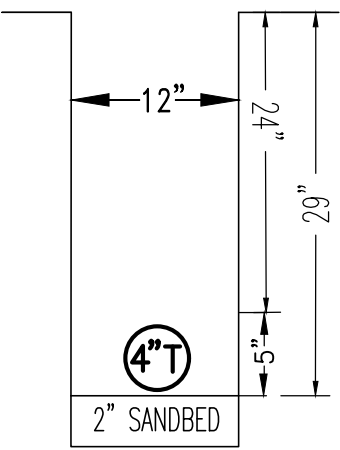
C

B

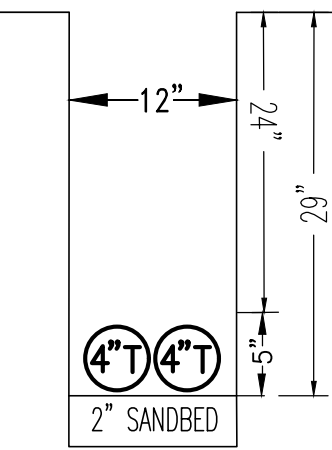
A



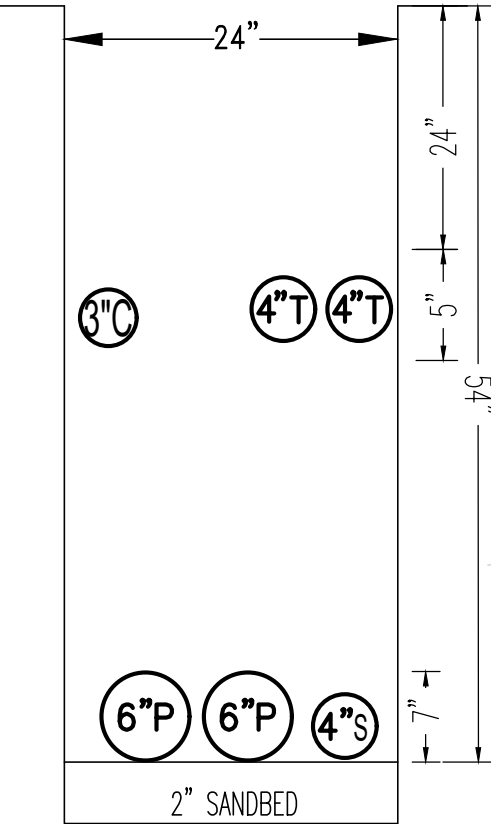
SECTION A2



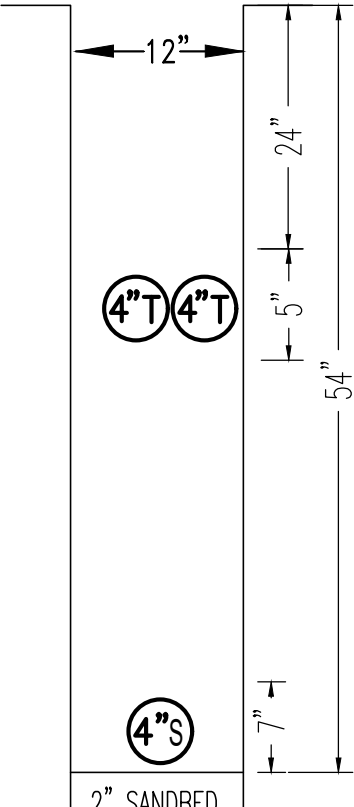
SECTION B4



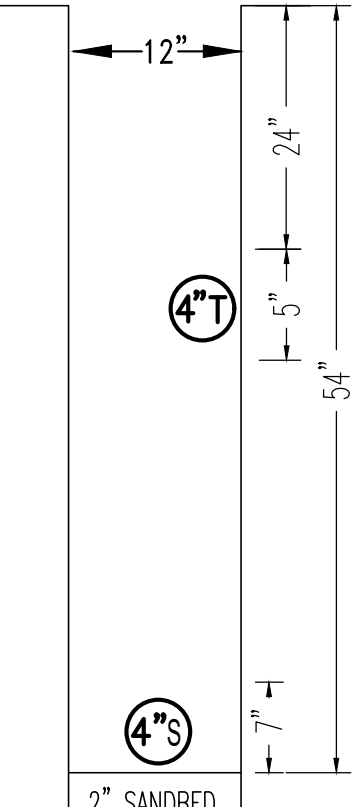
SECTION B6



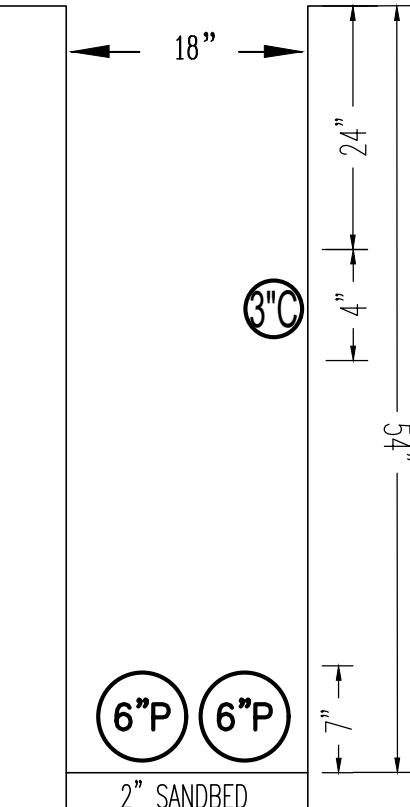
SECTION C



SECTION D



SECTION D1



SECTION E

TRENCH DETAILS
N.T.S

DRAWING #

PHASE 1
DEWITT AVE & SPRING AVE
MORGAN HILL, CA

JT-1

SHEET 2 OF 8
INCH
0 1

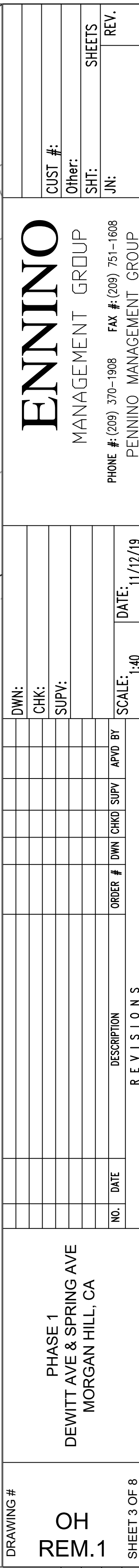
CUST #:	REV.
Other:	SHEETS
SHT:	JN:

PENNINO
MANAGEMENT GROUP
PHONE # (209) 370-1908 FAX # (209) 751-1608
PENNINO MANAGEMENT GROUP

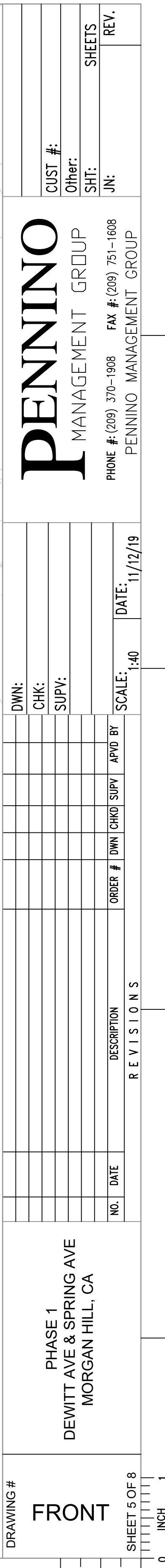
DWN:	CHK:	SUPV:	DATE:
			11/12/19

NO.	DATE	DESCRIPTION	ORDER #	DWN	CHKD	SUPV	APVD BY	SCALE:
								1:40

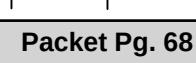
OH REMOVAL



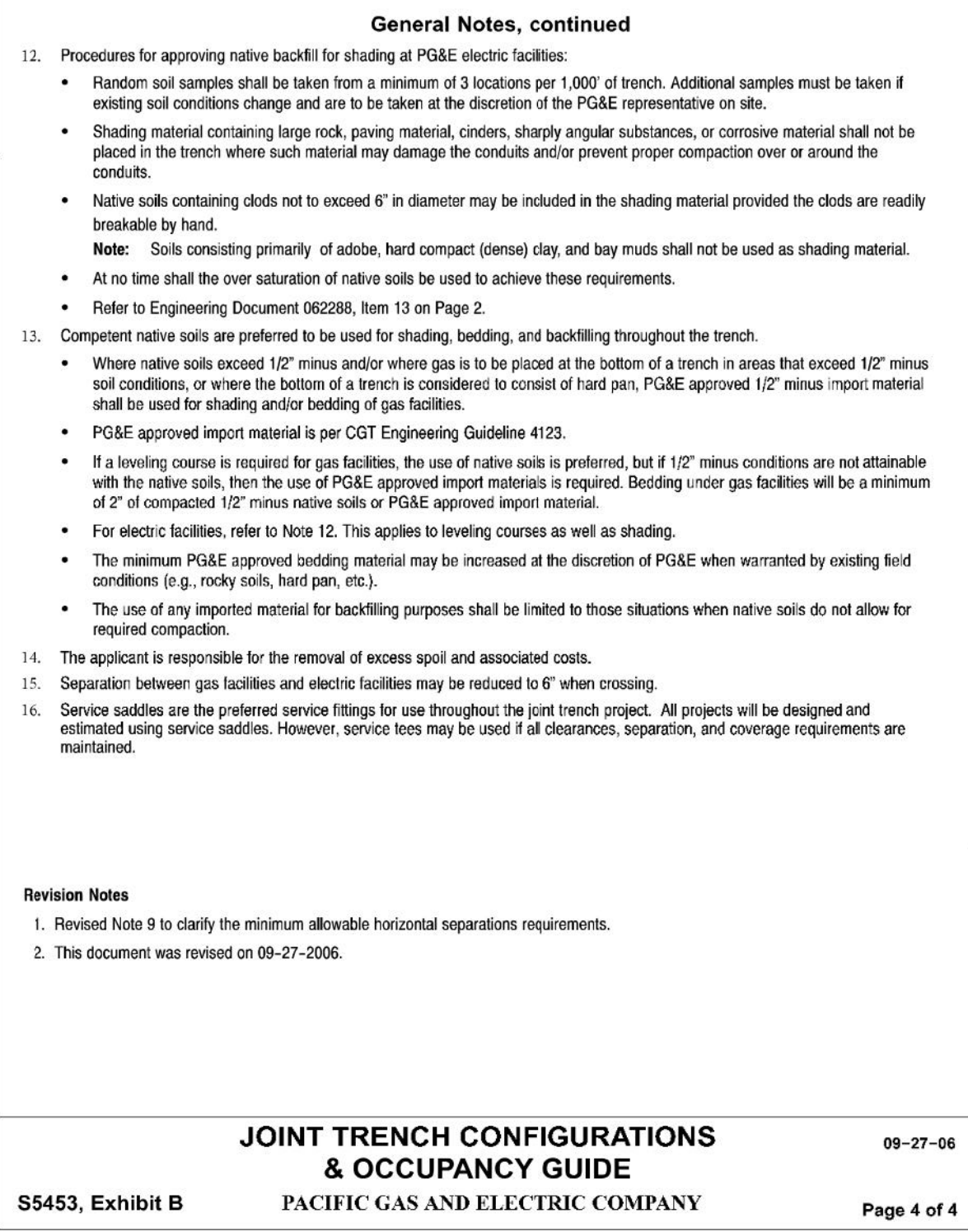
PRELIMINARY - TELEPHONE DRAWING



PRELIMINARY - CATV DRAWING



JOINT TRENCH SPECIFICATIONS

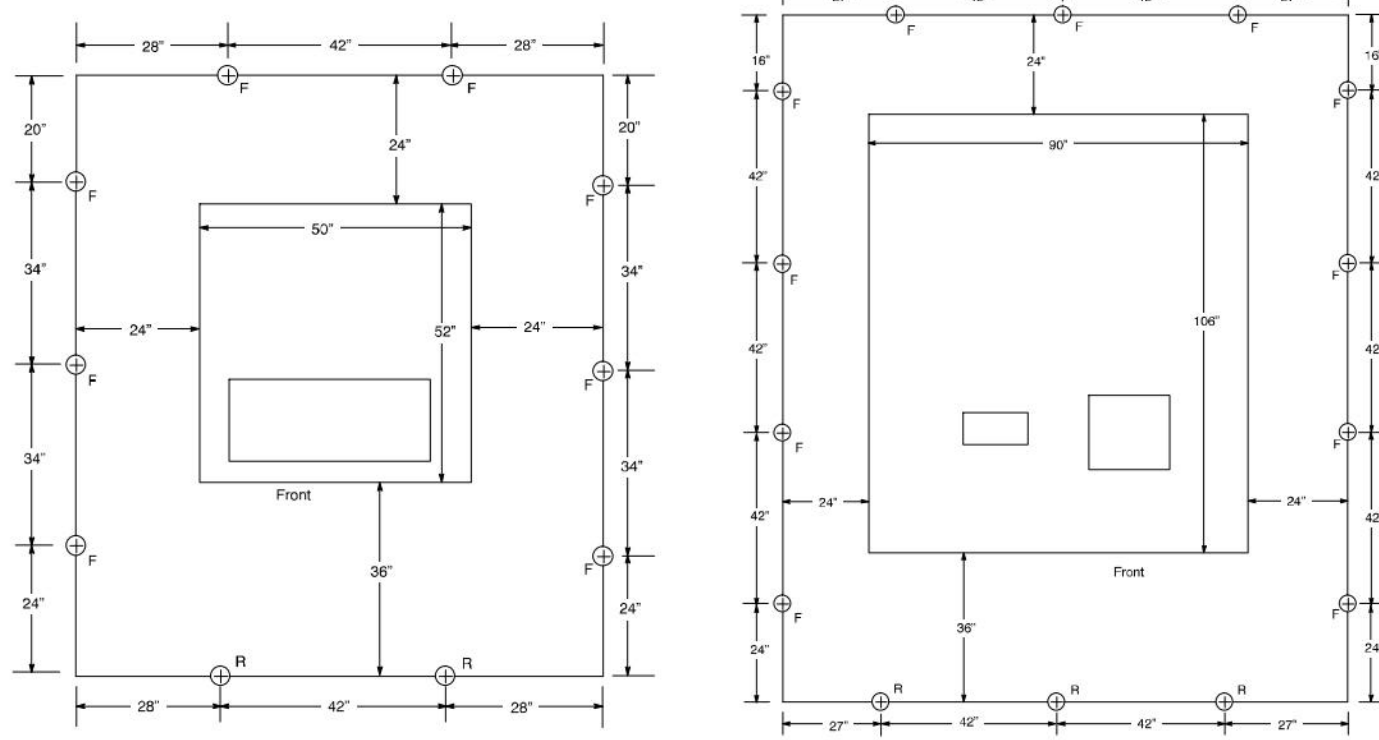


Primary Enclosures	Required Clearances
Round or Square	3' From Outside Edges
3' x 5' (interior dimensions)	
4' 6" x 8' 6" (interior dimensions)	3' From the Outside Edge of the Long Side / 5' From the Outside Edge of the Short Side
J-Box in 3' x 5'	3' on short sides, 2' on long side adjacent to the junction bars (the non-operable side), 5' on the long side opposite the junction bars (the operable side)
J-Box in 4' 6" x 8' 6"	5' on short sides, 2' on long side adjacent to the junction bars (the non-operable side), 5' on the long side opposite the junction bars (the operable side)

NOTE: MAXIMUM DEPTH ON PLASTIC PIPE TO BE 1

NOTE:
300° DEGREES MAX BENDS IN ANY CONDUIT RUN

NOTE:
300° DEGREES MAX BENDS IN ANY CONDUIT RUN





CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

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

APPROVE FUNDING AGREEMENT AND BUDGET AMENDMENT FOR MADRONE CHANNEL TRAIL IMPROVEMENTS PROJECT GRANT

RECOMMENDATION(S)

1. Approve and authorize the City Manager to execute and administer the Santa Clara Valley Transportation Authority's funding agreement for the Bay Area Air Quality Management District Transportation for Clean Air Program (TFCA) grant program for up to \$33,400 towards the construction of the Madrone Channel Trail Improvements Project; and
2. Adopt resolution amending the adopted Fiscal Year (FY) 2019-20 budget in Park Impact Fees Fund (301) to recognize the TFCA Grant as revenue.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element
Public Safety Master Plan

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to consider accepting a grant for the Madrone Channel Trail. On December 12, 2018, the Santa Clara Valley Transportation Authority (VTA) issued a call for projects for the Fiscal Year (FY) 2019-20 Transportation for Clean Air Program (TFCA) Manager 40% Fund. Staff submitted an application in March 2019 for funding a portion of the Madrone Channel Trail Improvements project. On October 3, 2019, staff received confirmation from the VTA that the project would receive grant funding in the amount of \$33,400.

The Madrone Channel Trail Improvements are part of the City's Bikeways, Trails, Parks and Recreation Master Plan adopted in July 2017 by the City Council. The expansion of pathways along drainage channels was identified as a priority in the Master Plan and is

also cited in the Morgan Hill General Plan Policy HC-3.14. Working in partnership with Valley Water to establish easements and develop trails and linear parks along creeks and drainage channels is a priority to ensure natural resources are protected and restored. Furthermore, the project is included in the FY 2019-20 Capital Improvement Program (Project #117018).

This project will pave the existing unpaved trail located on the Valley Water maintenance road adjacent to the eastside of the Madrone Channel. The existing trail was created with funding from a 2010 Valley Water Access to Trails and Open Space grant. The 2.9-mile trail runs along the eastside of Highway 101 from Tennant Avenue to Cochrane Road. The newly paved trail will now be American with Disabilities Act (ADA) compliant. In addition, amenities such as interpretative signage, benches, dog-waste stations, trash, and recycling bins will be added along the trail. The first phase (1.1 of the 2.9-mile trail) of the improvements from Cochrane Road to Main Avenue will connect the neighborhood near Main Avenue and Laurel Road to the Cochrane Commons Shopping Center which includes retail, restaurants, a credit union and other services.

Staff recommends that the City Council approve the agreement, authorize the City Manager to execute the attached TFCA agreement for \$33,400, and adopt a resolution amending the adopted City budget to reflect this grant funding.

COMMUNITY ENGAGEMENT: Inform

The Madrone Channel Trail Improvements were discussed during the development of the Bikeways, Trails, Parks and Recreation Master Plan process, which was a robust two-year community-based process from Fall 2015 to Winter 2017. As the project is close to being constructed, project information will be available to the community via Nextdoor, the City's e-mail newsletters and the City's website.

ALTERNATIVE ACTIONS:

An alternative action is to not approve the grant agreement for the Transportation Fund for Clean Air (TFCA) funding for the Madrone Channel Trail Improvements project and to provide staff with additional direction on development of the Trail.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved the inclusion of the Madrone Channel Trail Improvements (Project #117018) as a project in the City's adopted Capital Improvement Program. The project has been supported by the City Council through approval of the following City of Morgan Hill formally adopted Master Plans:

1. Adopted July 20, 2017, the Bikeways, Trails, Parks and Recreation Master Plan, as described above.
2. Previously adopted Parks, Facilities and Recreational Facilities Master Plan, which called for the installation of bike and pedestrian trails along all channels including trails along the Madrone Flood Control Channel.

3. January 23, 2019: The Council previously approved the submission of a grant application to Valley Water-Safe, Clean Water and Natural Flood Protection Program for \$200,000. The Council also found that the project was categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304 (Minor Alterations to Land).
4. May 15, 2019: The Council previously approved the submission of a grant application to the Metropolitan Transportation Commission (MTC) through the VTA for the allocation of Transportation Development Act (TDA) Article 3 Pedestrian/Bicycle Project funding for \$218,260.

FISCAL AND RESOURCE IMPACT:

The project is included in the adopted FY 2018-19 through FY 2023-24 Capital Improvement Program (CIP# 117018). The City has received the following two other grants for this project: Valley Water Safe, Clean Water Grant (\$120,000 approved out of the \$200,000 requested) and MTC TDA Grant (\$218,260). The project is currently in final design. While the final budget for the project will not be known until the construction bid is awarded, the first phase is anticipated to cost approximately \$400,000 and the complete project should cost approximately \$1 million. The project is planned to be funded through a combination of the grant funds mentioned above which have been awarded to Morgan Hill, and additional grants now being formulated, and the City's Park Impact Funds. If approved, the TFCA reimbursement grant amount of \$33,400 will be applied to the construction portion of the project. The attached resolution and budget scorecard memorializes the additional \$33,400 in revenue.

CEQA (California Environmental Quality Act):

Categorical Exemption

A Notice of Exemption for the Madrone Channel Trail Improvements was filed on January 14, 2020 with the County of Santa Clara Clerk-Recorder.

LINKS/ATTACHMENTS:

1. TFCA resolution
2. Morgan Hill 1920 TFCA agreement

RESOLUTION NO. __-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE CITY'S ADOPTED FISCAL YEAR 2019-20 BUDGET TO RECOGNIZE THE \$33,400 TFCA GRANT AS REVENUE IN THE PARK IMPACT FUND (301) TO BE EXPENDED ON ALREADY BUDGETED MADRONE CHANNEL TRAIL IMPROVEMENTS PROJECT

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

WHEREAS, the reasons supporting the City's approval of this budget amendment described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled, "Madrone Channel Trail Improvements Projects Grant Funding Agreement and Budget Amendment," submitted for City Council consideration at its meeting of February 19, 2020, submitted to the City Council by the City Manager (the "Staff Report,") the contents of which Staff Report are incorporated herein by this reference; and

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

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which 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 the City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 19th day of February 2020 by the following vote:

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

APPROVED:

ATTEST:

Rich Constantine, Mayor

IRMA TORREZ, City Clerk

⌘ CERTIFICATION ⌘

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____-____, adopted by the City Council at a regular meeting held on February 19, 2020.

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 #

017

FUND:

DEPARTMENT:

OBJECT:

301	Park Impact Fund
0000	
37575	PARK GRANTS

AGENDA DATE:

AGENDA ITEM TITLE:

02/19/20
TFCA Grant for Madrone Channel Trail Improvements

	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	1,310,000	(1,280,000)
RECOMMENDED ACTION		33,400	-	33,400
RESULT OF RECOMMENDED ACTION	4,116,066	2,710,962	6,490,802	336,226

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2019/20**

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

RECITALS

This Agreement is made with reference to the following facts:

- A. VTA has been designated by resolutions of the County of Santa Clara, as well as a majority of the cities within Santa Clara County, as the Program Manager for Santa Clara County Transportation Fund for Clean Air (“TFCA”) County Program Manager under the State of California Health and Safety Code Section 44241.
- B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara’s TFCA County Program Manager Fund (“County Program Manager Fund”) to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District (“BAAQMD”).
- C. On October 3, 2019, the VTA Board approved the programming of Fiscal Year (“FY”) 2019/20 Transportation Fund for Clean Air Program Manager funds for the Madrone Channel Trail Improvements (“Project”).
- D. This Agreement specifies the conditions under which VTA will allocate and administer a grant from the County Program Manager Fund to Sponsor for FY 2019/20.

Now, therefore the parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Project

- A. Subject to appropriation and receipt of TFCA funds (as further set forth in Section 9, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed thirty three four hundred dollars (\$33,400) (the “Grant Funds”) in consideration for Sponsor’s agreement to implement and complete the Project (as further set forth in the Project summary, attached hereto as **Attachment A**), in accordance with the terms and conditions set forth in this Agreement.
- B. In consideration of VTA’s providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Project in conformance with the terms of this Agreement. In implementing the Project, Sponsor shall comply with the Project schedule and monitoring requirements, as described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

- A. Sponsor shall assure that all Grant Funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state and local laws, and Sponsor shall require any other sub-recipients of Grant Funds for the Project to do the same.
- B. Sponsor shall comply with: (i) all TFCA Project requirements, as set forth in the BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending (FYE) 2020," the Funding Agreement between VTA and BAAQMD for FY 2019/20 (FYE 2020); and (ii) the TFCA County Program Manager Fund Policies for FYE 2020 (hereinafter "Policies"). These documents, including appendices and revisions, are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- C. Sponsor shall expend no more than six and a quarter percent (6.25%) of Grant Funds received hereunder on administrative costs, per California Health and Safety Code Section 44233.
- D. Sponsor shall return to VTA all Grant Funds that are not expended in accordance with applicable provisions of law.
- E. In addition, Sponsor shall return the Grant Funds to VTA if the Project is not maintained and/or operated throughout and until the conclusion of the "Number of Years of Effectiveness" ("Project Life"). This is the default value stated in Appendix H of BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2020" for the applicable project type, unless a different value was approved by VTA and shown to yield a Project that meets the cost-effectiveness requirement in the Policies by the Program Manager. The amount of Grant Funds returned to the Program Manager shall be calculated on a prorated basis based on the length of the Project Life.

Section 3. Term

- A. The term of this Agreement shall commence July 1, 2019 and shall continue until either the Project is completed or terminated in accordance with Section 15C, but no later than June 30, 2021 without written approval.
- B. Any requests for additional time to complete Project beyond June 30, 2021 must be submitted in writing to VTA no later than sixty (60) days prior to that date. VTA may approve or deny, in writing, two 12-month requests in its sole discretion. In order to approve any time extensions, sponsor must prove to VTA that significant progress has been made on implementing the Project. Any subsequent schedule extensions for the Project can only be approved in writing by BAAQMD on a case-by-case basis, if BAAQMD finds that Sponsor has made significant progress on the Project. A formal amendment to this agreement is not required.
- C. In addition to the specific term of this Agreement, Sponsor must maintain each Project for the term prescribed in Section 2(E) herein.

Section 4. Work Product

Sponsor shall place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code Sections 6250 et seq.).

Section 5. Acknowledgement of Funding Sources

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

Section 6. Insurance Coverage

Sponsor shall obtain and maintain, throughout the term of this Agreement, the insurance coverage specified in Attachment B "Insurance Requirements," and shall comply with all insurance requirements set forth therein, including the provision regarding documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement. The Sponsor shall forward a copy of the required insurance documentation to VTA to the email address insurance.certificates@vta.org with a copy to VTA Programming and Grants.

Section 7. Invoicing

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

Section 8. Reimbursement

- A. All funds allocated by VTA to Sponsor shall be on a cost-reimbursement basis only. VTA shall pay no funds in advance.
- B. Upon review and approval of invoices and documentation, VTA shall, within fifteen (15) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in Section 1 of this Agreement. Only those Project costs incurred by Sponsor on or after July 1, 2019 shall be considered reimbursable expenditures.
- C. Funds for the Project described in this Agreement, which are not submitted for reimbursement prior to June 30, 2021, shall not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2021, has been approved by VTA and BAAQMD, as set forth in Section 3, above.

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

VTA's obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by BAAQMD under VTA's "20-SC" agreement with BAAQMD for approved projects during Fiscal Year 2019/20.

Section 10. Audit

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

Section 11. Sponsor's Record Keeping

Sponsor shall:

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

- D. Submit a mid-year progress report to VTA one (1) month after the end of the second quarter of each fiscal year (“fiscal year” means the period starting July 1 and ending June 30). The report shall itemize: (a) the expenditure of the funds; and (b) progress to-date in the implementation of each funded Project.
- E. Submit a year-end report within one (1) month of the end of each fiscal year until each Project is completed and all monitoring requirements have been fulfilled. The report shall itemize: (a) the expenditure of the funds; (b) progress to-date in the implementation of each funded Project; and (c) the results of the monitoring of the performance of the Project as specified in Attachment A.

Section 12. Indemnity

- A. Sponsor shall comply with the indemnity provision set forth in Attachment B.

Section 13. Review

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

Section 14. Non-Performance

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

Section 15. General Terms and Conditions

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

To VTA:	Santa Clara Valley Transportation Authority Director, Planning & Programming 3331 North 1st Street San José, CA 95134-1906
---------	---

To SPONSOR: City of Morgan Hill
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037-4128

B. Program Liaison. Within thirty (30) days from the Effective Date of this Agreement, Sponsor shall notify VTA of Sponsor's "Program Liaison" and of the Program Liaison's address, telephone number, and email address. The Program Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the Project(s). Sponsor shall notify VTA of the change of Program Liaison or of the Program Liaison's contact information in writing no later than thirty (30) days from the date of any change.

C. Termination.

Voluntary. Either Party may terminate this Agreement and/or a Project at any time by giving written notice of termination to the other Party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least ninety (90) days before the effective date of such termination, unless the Parties mutually agree to an earlier termination date. This Agreement shall also terminate at the end of the fiscal year during which the Santa Clara Valley Transportation Authority loses its designation as County Program Manager for Santa Clara County.

If VTA terminates this Agreement and/or a Project pursuant to this provision, the Sponsor shall cease all work under this Agreement and cease further expenditures of Grant Funds received under this Agreement for the terminated Project immediately upon receipt of the notice of termination, excepting any work permitted to continue that is specified in the notice of termination. VTA will reimburse Sponsor for eligible costs on the Project expended up to the effective date of the termination and no further Grant Funds will be provided for that Project.

If Sponsor terminates this Agreement and/or a Project pursuant to this provision, the Sponsor must return all Grant Funds provided by VTA for the specific Project up to and including the date of termination.

After Breach. VTA may terminate this Agreement and/or a Project for breach. VTA will deliver a written notice of breach that specifies the date of termination, which will be no less than ten (10) business days from delivery of such notice and will provide the Sponsor the opportunity to contest such breach within that period of time. If Sponsor contests the notice of termination for breach, VTA shall deliver a new written notice providing VTA's determination of Sponsor's contestation. If the termination for breach is upheld, the written notice shall specify effective date of termination and Sponsor will have ten (10) business days to cure. If the breach is not cured within the allotted time, VTA will pursue the termination. The notice of termination will specify the Total Grant Funds VTA has paid to the Sponsor, which Sponsor must reimburse to the VTA within thirty (30) days of the effective date of termination

D. Non-Waiver. The failure of either party to insist upon the strict performance of any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

E. Assignment: Sponsor shall not assign, sell, license, or otherwise transfer any rights or

obligations under this Agreement without the prior written consent of VTA.

- F. **Integration.** This Agreement, including all attachments and references, constitutes the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties relative thereto.
- G. **Amendments.** Future amendments and modifications to this Agreement shall be made in writing and signed by both parties.
- H. **Attachments.** Each attachment hereto is incorporated into this Agreement as if fully set forth herein.
- I. **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- J. **Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.
- K. **Survival.** Any provision that, by its nature, extends beyond the term or termination of this Agreement shall survive the expiration or termination of this Agreement.

Signatures of Parties on following page.

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

City of Morgan Hill
(Sponsor)

Santa Clara Valley Transportation Authority
(VTA)

Dated: _____

Dated: _____

Christina J. Turner, City Manager
(Sponsor)

Nuria I. Fernandez, General Manager/CEO
VTA

Attest:

Michelle Bigelow/City Clerk-Deputy City Clerk

Approved as to Form:

Approved As To Form:

Donald A. Larkin, City Attorney

VTA Counsel

Attachment: Morgan Hill 1920 TFCA agreement [Revision 1] (2640 : Approve Agreement for TFCA Funding for Madrone Channel Trail

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 20SC08
- B. Project Title: Madrone Channel Trail Improvements
- C. TFCA Program Manager Funds Allocated: \$33,400.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$33,400.00
- F. Total Project Cost: \$401,958.00
- G. Project Description:

Grantee will use TFCA funds to pave a 1.1-mile portion of the Madrone Channel trail, and add amenities such as the installation of interpretative signage, benches, dog-waste stations, trash and recycling bins for the section of the trail from Main Avenue to Cochrane Road.

- H. Final Report Content: Final Report Form for bicycle projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT B

INSURANCE REQUIREMENTS

I. INDEMNITY

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

II. INSURANCE

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

A. Liability and Workers’ Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

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

2. Minimum Limits of Insurance

Sponsor must maintain limits no less than:

- a. General Liability: \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Property insurance in an amount not less than the replacement cost value (RCV) of vehicles, vessels, engines, or equipment funded under this Agreement.

3. Self-Insured Retention

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

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

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

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Sponsor must obtain or cause to be obtained the broadest extended reporting

period coverage available in the commercial insurance market. This extended reporting provision must be of at least two (2) years.

3. No prior acts exclusion may be added to the policy during the contract period.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

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

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Sponsor, including VTA's general supervision of the Sponsor; products and completed operations of the Sponsor or subcontractors; premises owned, occupied or used by the Sponsor; or automobiles owned, leased, hired or borrowed by the Sponsor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. The Sponsor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by the Sponsor and its subcontractors for VTA.
- b. The Sponsor's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials,

employees, or volunteers may apply only as excess to the Sponsor's insurance. Sponsor's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

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

D. Acceptability of Insurers

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

E. Certificates of Insurance

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

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

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

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

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

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

F. Maintenance of Insurance

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



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Mario Ramirez,
APPROVED BY: City Manager

APPROVE PURCHASE OF A NEW SCHOOL RESOURCE OFFICER VEHICLE

RECOMMENDATION(S)

1. Approve the purchase and build-out of a 2020 Ford Explorer for the Police Department's School Resource Officer; and
2. Authorize the City Manager to approve the purchase order with Priority 1 Public Safety Equipment Installation, Inc. in the not to exceed amount of \$67,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Community Engagement and Messaging
Financial Stewardship

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

Staff recommends the purchase of a 2020 Ford Explorer that will be added to the current fleet for the use of our School Resource Officer (SRO). The Morgan Hill Police Department currently staffs two SRO Positions, and a third SRO position is currently vacant. Our senior SRO will utilize this new vehicle during his duties, while our second and third SRO will utilize our patrol fleet pool vehicles.

FLEET BACKGROUND

There are currently 40 vehicles and 5 trailers in the Police Department's fleet. Seventeen patrol cars and three motorcycles are assigned to twenty-four patrol officers in Field Operations. Eight unmarked police cars are assigned to eight detectives assigned to Special Operations, and three unmarked police vehicles are assigned to Administration. Other vehicles include training motorcycles, OES, Property/Evidence, Mobile Command Vehicle, pool patrol vehicles, and a 4WD Expedition used by the SRO. Each vehicle has a replacement date of approximately six to ten years, depending on the type of vehicle and its assignment. The Police Department's Vehicle Replacement Plan allows the City to financially plan for scheduled vehicle purchases to maintain safe, operational police vehicles for patrol officers, detectives, and civilian members of the Department. Additionally, during the FY 2019-20 budget cycle, Council

approved the purchase of the new vehicle to provide a dedicated vehicle for the current SRO.

The purchase of the vehicle provides a unique opportunity to engage with our youth community in a new and creative way. Each of the three Morgan Hill Unified School District's high schools will submit a prospective graphic design for the exterior of the vehicle. Each design must incorporate the words "Morgan Hill Police Department" and the mascot for *all* local public high schools. All submissions must be submitted to the police department in digital form by May 8, 2020. Each high school will use its own process to determine the top submission that will be forwarded to the Police Department. The Department's Command Staff will then review the final three (Live Oak, Sobrato, and Central High) submissions. The three submissions will be posted to the Department's Facebook page, requesting members of our community vote for the winning design. The selected artist(s) will be presented with a letter of recognition by the Chief of Police prior to the end of the school year, with the planned unveiling during the FY 2020-21 school year.

The Police Department recommends purchasing a 2020 Ford Explorer through a third party: Priority 1 Public Safety Equipment Installation Inc. (Priority 1). The Police Department has purchased twelve fleet vehicles in recent years through Priority 1. Priority 1 will utilize the state governmental competitive bid contract from Town Ford pursuant to Morgan Hill Municipal Code ("MHMC") Sections 3.04.150(2) and 3.04.180 to obtain the fleet price by the (Contract#: 72305 on-going effective date: 08/03/2017) competitive bid contract for the Patrol Ford Explorers. The Ford Store of Morgan Hill is unable to order Police Interceptors from the Ford factory.

This competitive bid price does not include the vehicle build-out. The costs associated with the build-out include but are not limited to lights, prisoner cargo area, siren, control modules, radio installation, computers, and decals, and cost estimates are listed under the financial section of this staff report.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the Police Department's Vehicle Replacement Plan. This is required to maintain a safe and operational fleet. All police vehicles are outfitted with emergency communications and officer safety equipment. There are no local vendors with a governmental competitive bid contract that supplies Police Package Ford Explorers.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has previously accepted the use of Priority 1 for the purchase and build-out of police vehicles.

FISCAL AND RESOURCE IMPACT:

There is \$67,000 appropriated in the Police Department's FY 2019-20 operating budget for the purchase and build-out of the vehicle. (GL#: 010.3245.43830).

The total price of the 2020 Patrol Ford Explorer Utility is \$62,348, and the remainder budget will be allocated towards the final graphic design wrap. The break-down of costs for the vehicle is below.

Description	Cost
2020 Ford Explorer Vehicle	\$ 44,510
Emergency System Build-out	\$12,690
Sales Tax (9%)	\$5,148
Subtotal	\$62,348
Final Graphic Design Wrap Budget	\$4,652
TOTAL	\$67,000

The final graphic design wrap will also be completed by the same vendor. Since the winning design isn't available yet, there is no definite estimate or quote available. However, staff believes it can be reasonably accommodated within the remaining budget.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Est_2890_from_Priority_1_Public_Safety_Equipment_Installation_Inc._18532



Priority 1 Public Safety Equipment Installation Inc.

425 Harbor Blvd. #6
Belmont, CA 94002-4048
TEL: (650) 654-9900
FAX: (650) 654-9947

Estimate

Date	Estimate #
1/24/2020	2890

Name / Address
City of Morgan Hill 100 Edes Ct Morgan Hill, CA 95037

Attention
Sgt. Ramirez

Vehicle#	Terms	Rep
SRO	Net 30	Marc

Item	Description	Qty	Total
K8A	2020 Ford Interceptor Utility, AWD, with the following equipment: (UM) Agate Black Paint, (9) Cloth Bucket Seats, (6) Ebony Interior, (500A) Equipment Group, ((99c) 3.0L V6 EcoBoost Engine, (67V) Police Wire Harness, (43D) Dark Car Feature, (51S) Dual Spotlamps, (59B) Keyed Alike 1284X, (17T) Rear Red/Wht Dome Light, (96W) Front Interior Windshield Light, (96T) Rear Spoiler Traffic Warning Light, (52P) Rear Door Handles Inop with Hidden Plunger, (66A) Front Headlamp Lighting Solution, (86T) Taillight Housing Prep, (90G) Ballistic Door Panels IV+ (76R) Reverse Sensing, (60R) Noise Suppression Bonds.	1	44,510.00T
Tire Fee	Ca. Tire Tax Fee	1	8.75T
PRI-KIT	Wire harness-Relays, diodes, connectors, hardware etc.	1	450.00T
27.1.20	27 Circuit Power Distribution Center	1	620.00T
Z3	Code 3 Z3 siren controller	1	862.50T
C3100U	Code 3 100w siren speaker with universal mounting bracket	1	181.65T
MCRNTJ	Whelen micron snap in grill light split red/blue	2	253.00T
VTX609R	Whelen Vertex Hide-a-way super L.E.D, Red	2	230.01T
VTX609B	Whelen Vertex Hide-a-way super L.E.D, Blue	2	230.00T
EGHST1 J-12	Sound Off bracket mount Ghost Light, RED/BLUE (rear door windows)	2	230.00T
ENT2B3-J	Sound Off under mirror intersector light red/blue	2	300.00T
Misc	Under mirror adapters for intersection lights	1	50.00T
BK0534ITU20	Setina PB400 pushbumper	1	380.00T
Subtotal			
Sales Tax (9.0%)			
Total			

Attachment: Est_2890_from_Priority_1_Public_Safety_Equipment_Installation_Inc._18532 (2641 : Purchase of a New School Resource Officer



Priority 1 Public Safety Equipment Installation Inc.

425 Harbor Blvd. #6
Belmont, CA 94002-4048
TEL: (650) 654-9900
FAX: (650) 654-9947

Estimate

Date	Estimate #
1/24/2020	2890

Name / Address
City of Morgan Hill 100 Edes Ct Morgan Hill, CA 95037

Attention
Sgt. Ramirez

Vehicle#	Terms	Rep
SRO	Net 30	Marc

Item	Description	Qty	Total
PB-5	Setina Fender Wrap	1	386.50T
CC-UV-L-18	Troy 18" L console for mix of long and short components	1	420.00T
AC-INBHG	4 Inch Cup Holder	1	43.00T
L3-APISET	Troy DC outlet plug with black caps	1	12.50T
14152532	Blue Sea dual USB socket with cover	1	33.00T
MMSU1	Magnetic mic clip kit.	2	66.00T
933-0092A	D&R Sub-Frame used with Laguna Ready Buckle Seat System	1	400.00T
933-0683A	D&R Single Drawer Cabinet Used with no prisoner seat	1	1,400.00T
CM-732	Custom upper D&R Bar	1	125.00T
633623	Rigid R2-46 Combo Retrofit (hyperspot/drive)	2	1,050.00T
PK0316ITU202ND	12VS coated poly rear partition 2020 Utility	1	420.00T
WK0040ITU20	Setina Window Barrier VS 3-Piece Set, Side Windows & Rear Hatch. Rear Cardo Compartment	1	338.00T
Misc	Tremco Ignition Security System	1	145.00T
GF1092ITU12	Setina T-Rail Free Standing Mount Kit for 2020 Interceptor Utility	1	190.00T
GK10301S1USSCA	T-Rail dual gun mount with 1 universal and 1 shotgun.	1	385.00T
Labor	Install and wire emergency equipment, police radio and gunlock system	1	3,000.00T
Freight	Freight	1	480.00T
Subtotal			\$57,199.91
Sales Tax (9.0%)			\$5,147.99
Total			\$62,347.90

Attachment: Est_2890_from_Priority_1_Public_Safety_Equipment_Installation_Inc._18532 (2641 : Purchase of a New School Resource Officer



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

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

AWARD CONTRACTS FOR ON-CALL EMERGENCY SPILL RESPONSE CLEANUP SERVICES

RECOMMENDATION(S)

1. Determine that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances pursuant to Morgan Hill Municipal Code 3.04.150 (1);
2. Award consultant agreements to All Clean Hazardous Waste Removal, Inc. ("All Clean") and Disaster Kleenup Specialists ("Disaster Kleenup") for emergency spill response cleanup services for three years with the option to extend the term of the agreements for an additional year; and
3. Authorize the City Manager to execute the agreements and other related documents for a three-year term not to exceed \$100,000 and authorize the City Manager to extend the term of the agreements for an additional year.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider entering into new agreements with spill cleanup contractors whose current agreements expire on June 30, 2020.

Most spills on public property in the City of Morgan Hill do not post an immediate threat to human health or the environment (e.g., paint, oil, sanitary sewer leaks, etc.) and are routinely dealt with by City staff. Occasionally, there are spills (e.g. large spills, extremely hazardous materials, etc.) that are beyond City staff's resources and expertise and contracted help is needed. These proposed contracts are designed to address these latter uncommon spills.

After an oil spill in 2015 made it clear that it would be wise to have an established contractor in place when spill emergencies do occur, the Community Services Department sent a Request for Proposals (RFP) to companies in the South Bay Area

that provide emergency spill cleanup services in order to have spill cleanup contractors under contract on an on-call basis. Having multiple contracts in place provides the City with flexibility during urgent circumstances and enables staff to select the firm that can respond most efficiently during spill emergencies. A contract with All Clean Hazardous Waste Removal, Inc. (All Clean) was approved at the May 18, 2016 City Council Meeting. A contract with Disaster Kleenup Specialists ("Disaster Kleenup") was approved at the September 7, 2016 City Council Meeting.

Since bringing both Disaster Kleenup and All Clean under contract in 2016, approximately \$10,591 has been expended on spill cleanup activities. Staff recommends continuing to retain these two companies under new on-call spill cleanup contracts. While expenses in the past several years have thankfully been minimal, the large recommended amount ensures the City can respond in a timely manner to large events while reducing the potential for price gouging or other unfortunate occurrences.

Per Section 3.04.150 of the Morgan Hill Municipal Code, the City Council may elect to make any purchase in any amount by an affirmative vote of three city council members upon a determination that competitive bids upon notice would not be likely to result in lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstance. Staff recommends that the Council make this determination in this instance, instead of ordering competitive bidding, because the City is highly unlikely to get better pricing from the competitive bidding process given the small number of firms that provide this service and relatively small utilization of services since 2016. Therefore, soliciting competitive bids would ultimately result in an unnecessary administrative expense.

COMMUNITY ENGAGEMENT: Not Applicable

Since emergency spill response cleanup services are an expected City service, no specific engagement activities were conducted in association with the proposed on-call emergency spill response cleanup services agreements.

ALTERNATIVE ACTIONS:

The City Council may decide to not award the contracts for on-call emergency spill response cleanup services and may direct staff to recruit additional spill response companies or solicit competitive bids.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

A contract for emergency spill response cleanup services with All Clean Hazardous Waste Removal, Inc. was approved at the May 18, 2016, City Council Meeting. A contract with Disaster Kleenup Specialists was approved at the September 7, 2016, City Council Meeting.

FISCAL AND RESOURCE IMPACT:

The funds to pay for normal emergency cleanup services are included in the City's street maintenance budget and no budget adjustment is associated with the approval of these contracts.

The City's actual costs will be contingent on the circumstances and frequency of emergency spill events. In situations where a spill has an identifiable responsible party, the City will seek reimbursement for its expenses and no City funds will ultimately be spent. If there is no identifiable responsible party for an emergency spill, clean up costs are typically charged to the City's street maintenance budget, in the General Fund (010), since most spills occur on streets. Since 2016, approximately \$10,591 has been expended on spill cleanup activities.

Since costs can rapidly accumulate during large emergencies, staff is proposing a \$100,000 cap on each proposed contract. If more than \$100,000 is needed for emergency spill cleanup services during the initial term of the agreement, the contract would at least secure enough resources for the City to start emergency cleanup processes while additional funds are secured through the necessary administrative and legal processes. Even in these circumstances continuing to have contracts in place before the event will ensure that costs are minimized.

CEQA (California Environmental Quality Act):

Not a Project.

The approval of a contract for emergency spill response service to be provided is not a project as defined in Section 15378 of the State CEQA Guidelines. Should response actually be necessary, the response will likely be Categorically Exempt per Class 30, Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances.

LINKS/ATTACHMENTS:

1. Disaster Kleenup_signed
2. All Clean Hazardous Waste_signed

CONSULTANT AGREEMENT DISASTER KLEENUP SPECIALISTS

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2023 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of 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 cleanup of emergency hazardous materials spills as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred 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 CONSULTANT'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:

DISASTER KLEENUP SPECIALISTS
567 Ortiz Avenue
Sand City, California 93955

Address of CITY is as follows:

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

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

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

16. **Maintenance of Records.**

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

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

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

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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

Christina J. Turner

Print Name

Print Name

Date:

Date:

APPROVED AS TO FORM:

DISASTER KLEENUP SPECIALISTS

City Attorney

By:

Donald A. Larkin

Theresa Ream owner

Print Name

Print Name and Title of Signer. President

If Corporate: Chairman, President or Vice President

Date:

Date:

By:

Terry Ream V.P.

Print Name and Title of Signer.

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

Date:

EXHIBIT A SCOPE OF SERVICES

Disaster Kleenup Specialists will aid the City of Morgan Hill in quick and efficient cleanup of hazardous material spill incidents. The services included in this contract are on-call and will make necessary equipment and expertise readily available to the City when emergency spill cleanup is required. The purpose of the on-call contract is to expedite spill response times in order to minimize potential impacts to human health and the environment.

Services could range from cleanup of hazardous materials spilled in a worst case scenario train derailment with tanker cars, to more common cleanups including small oil spills, paint dumped in a gutter, or cleanup of unknown materials from a leaking abandoned hazmat drum.

EXHIBIT B – SCHEDULE OF COMPENSATION RATES

Item	Description of Bid Item	Unit of Measure	Unit Price
Travel Distance from Business Location to City of Morgan Hill: 20-25 miles			
Estimated Time Required to be On-Scene from the Time of Request for Services: 1-2 hours			
1	Travel to Morgan Hill - Cost to Transport Cleanup Equipment and Materials	Per Mile/ Per Vehicle	\$0.26 cents per mile
2	Labor - List typical staff positions involved in cleanups and their hourly billing rate. • Project Manager • Hazardous Materials Driver • Hazardous Materials Technician	Per Hour/ Per Person	\$94/hour \$85/hour \$115/hour
3	Equipment Required - List equipment that may be used for cleanups and hourly cost to operate - NONE LISTED	Per Hour/ Per Unit	
4	Materials - List materials that may be used in cleanups and cost per unit (e.g. absorbents) • 55 Gallon Drums • Absorbents • Spill Pillows • Spill Booms • PPE Level D	Per Unit	\$102 each \$9.25/bag \$181/box \$195/box \$27/set
5	Hazardous Waste Disposal - List tasks associated with hazardous waste disposal and associated fees, including travel costs • Hazardous Waste Profiling • Hazardous Materials Waste Manifest	Per Task	\$25/each \$15/ea
6	Completion of a Cleanup Summary Report - Should include a basic list of emergency cleanup tasks completed and, if applicable, recommendations for long-term follow-up actions/remediation	Per Incident	\$250/ Incident
7	Administrative Fees	Per Incident	\$65/hour

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The intent of this contract is to make necessary equipment and expertise readily available to the City of Morgan Hill when quick and efficient cleanup of emergency hazardous material spill incidents is required. Disaster Kleenup Specialists shall begin provision of cleanup services as soon as possible, and no later than two hours after emergency cleanup services are requested.

**CONSULTANT AGREEMENT
ALL CLEAN HAZARDOUS WASTE REMOVAL, 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 ALL CLEAN HAZARDOUS WASTE REMOVAL, 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, 2023 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of 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 cleanup of emergency hazardous materials spills as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$100,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred 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 CONSULTANT'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:

ALL CLEAN HAZARDOUS WASTE REMOVAL, INC.
21 Great Oaks Boulevard
San Jose, CA 95119

Address of CITY is as follows:

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

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
16. **Maintenance of Records.**
 - 16.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

- 16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
18. **Time of Essence.** Time is of the essence in the performance of this Agreement.
19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
21. **Defense and Indemnification.**
- 21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.
- 21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

21.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

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

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

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

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

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

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

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:

ALL CLEAN HAZARDOUS WASTE
 REMOVAL, INC.

 City Attorney

By: Fred Murabito
 Fred Murabito

 Donald A. Larkin
 Print Name

President

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

Date: _____

Date: 2/5/2020

 By: Tim White, Secretary

Date: 2/5/2020
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: Secretary

EXHIBIT A SCOPE OF SERVICES

All Clean Hazardous Waste Removal, Inc. will aid the City of Morgan Hill in quick and efficient cleanup of hazardous material spill incidents. The services included in this contract are on-call and the Consultant will make necessary equipment and expertise readily available to the City when emergency spill cleanup is required. The purpose of the on-call contract is to expedite spill response times in order to minimize potential impacts to human health and the environment.

Services could range from cleanup of hazardous materials spilled in a worst-case scenario train derailment with tanker cars to more common cleanups including small oil spills, paint dumped in a gutter or cleanup of unknown materials from a leaking abandoned hazmat drum.

BID FORM			
Bid Item	Description of Bid Item	Approx. Quantity/ Unit of Measure	Unit Price
Travel Distance from Business Location to City of Morgan Hill: <u>12 miles</u>			
Estimated Time Required to be On-Scene from the Time of Request for Services: <u>2 hours</u>			
1	Travel to Morgan Hill - Cost to Transport Cleanup Equipment and Materials	Per Mile/ Per Vehicle	Included in other fees
2	Labor - List typical staff positions involved in cleanups and their hourly billing rate	Per Hour/ Per Person	
	• Environmental Technician (Initial 24 Hr.)		\$145.00
	• Environmental Technician		\$115.00
	• Environmental Technician Double Time		\$180.00
	• DOT Driver (Initial 24 Hr.)		\$175.50
	• DOT Driver		\$135.00
	• DOT Driver DT		\$200.00
	• Supervisor Project Lead (Initial 24 Hr.)		\$165.00
	• Supervisor Project Lead		\$130.00
	• Supervisor Project Lead DT		\$195.00
	• Field Chemist (Initial 24 Hr.)		\$200.00
	• Field Chemist		\$188.50
	• Field Chemist D.T.		\$250.00
	• Engineer (Initial 24 Hr.)		\$300.50
	• Engineer		\$200.00
	• Project Manager (Initial 24 Hr.)		\$225.00
	• Project Manager		\$188.00
	• Project Manager DT		\$250.00
3	Equipment Required - List equipment that may be used for cleanups and hourly cost to operate	Per Hour/ Per Unit	
	• Vacuum Truck (6 hour minimum)		\$205.00
	• Vacuum Truck OT		\$266.50
	• Vacuum Truck DT		\$307.00
	• Gear Truck		\$50.00
	• Utility Truck		\$25.00
	• Back Hoe (\$1,200.00 minimum)		\$150.00
	• Generator		\$25.00
	• Pressure Washer		\$50.00



EXHIBIT B: SCHEDULE OF COMPENSATION RATES

4	Materials	Per Unit	
	- List materials that may be used in cleanups and cost per unit (e.g. absorbents)		
	• Bag of Absorbent 20lb. bag		\$15.00
	• Absorbent Bale		\$275.00
	• Visqueen Roll		\$115.00
	• Drum Liners		\$6.00
	• Rags Per Lbs.		\$4.75
	• Cleaning Supplies Case by Case		NA
	• Level D PPE / day / person		\$60.00
	• Level C PPE / day / person		\$90.00
	• Level B PPE / day / person		\$350.00
	• Level A PPE / day / person		\$700.00
5	Hazardous Waste Disposal	Per Task	
	- List tasks associated with hazardous waste disposal and associated fees, including travel costs		
	•Waste Profiling (included in disposal cost)		No charge

BID FORM			
Bid Item	Description of Bid Item	Approx. Quantity/ Unit of Measure	Unit Price
	•Waste Transportation (drum charge)		
	• 30-55g	Each	\$55.00
	• 6-20g	Each	\$45.00
	• 1-5g	Each	\$35.00
	• CYB	Each	\$325.00
	•Waste Disposal (Case by Case)		N/A
	•Field Chemical Identification (unknown material)	Each	\$175.00
	•Analytical/Lab analysis (case by case)	Each	N/A
6	Completion of a Cleanup Summary Report - Should include a basic list of emergency cleanup tasks completed and, if applicable, recommendations for long-term follow-up actions/remediation	Per Incident	
7	Administrative Fees	Per Incident	10%
8	Other Foreseeable Cleanup Tasks Not Listed Above		
	•		
	•		
	•		
	•		

END OF BID SCHEDULE

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The intent of this contract is to make necessary equipment and expertise readily available to the City of Morgan Hill when quick and efficient cleanup of emergency hazardous material spill incidents are required. All Clean Hazardous Waste Removal, Inc. shall begin provision of cleanup services as soon as possible, and no later than two hours after emergency cleanup services are requested.



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Hilary Holeman, Administrative Analyst

APPROVED BY: City Manager

RATIFY CITY POSITION ON CALIFORNIA HOUSING BILL SB 50

RECOMMENDATION(S)

1. Receive legislative correspondence in opposition of Senate Bill (SB) 50 (Wiener) Planning and Zoning: Housing Development: Streamlined Approval: Incentives; and
2. Ratify City's position.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

Regional Initiatives
Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Per Resolution No. 6851 (Attachment 1), the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State legislation is timely and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position on pending legislation as long as the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy. When this occurs, a written report to the City Council for comment and acceptance is required at the next possible meeting.

On January 15, 2020, the League of California Cities requested cities oppose Senator Scott Wiener's Housing Bill, SB 50 "Planning and zoning. Housing development: streamlined approval: incentives," before it was to be heard by the Senate on January 29, 2020. The City expressed its concerns about SB 50 unjustly stripping control from city officials and recommended solutions to produce enough affordable housing in the attached opposition letter (Attachment 2) on January 27, 2020. On January 30, 2020 SB 50 failed to pass the Senate Floor.

This bill (Attachment 3) required cities to grant an equitable communities incentive, which reduces specified local zoning standards in “jobs-rich” and “transit rich areas,” as defined, when a development proponent meets specified requirements, if the local government has not adopted a local flexibility plan approved and certified by the Department of Housing and Community Development, by January 1, 2023. This bill also required a neighborhood multifamily project containing up to four dwelling units to be subject to a streamlined, ministerial approval process, as specified.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the letter that the City sent regarding SB 50.

ALTERNATIVE ACTIONS:

Council could rescind position taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time. Tracking legislation is an activity included in the annual workplan of the City Manager’s Office.

CEQA (California Environmental Quality Act):

Not a Project - Proposals for legislation to be enacted by the State Legislature.

LINKS/ATTACHMENTS:

1. Resolution 6851
2. SB 50 City of Morgan Hill Letter of Opposition 1.27.2020
3. SB 50 Bill Text

RESOLUTION NO. 6851

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE LEGISLATION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report entitled "City Position on Pending State Legislation" submitted for City Council consideration at its meeting of April 16, 2014, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

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

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

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

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

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

Section 2. **Approval and Authorization.** The City Council prefers, whenever possible, that determinations on whether to take a position on pending State legislation be brought before

the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State legislation that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

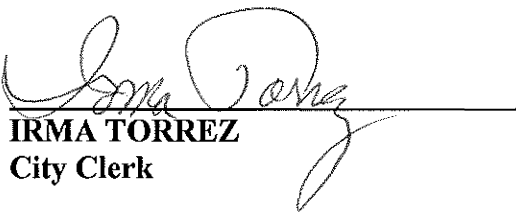
- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State legislation that may have impacts upon City when all of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending State legislation or the City has otherwise become aware of such pending State legislation; and
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending State legislation is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending State legislation; and
 - iii. The pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending State legislation.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending State legislation pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending State legislation and the comment or position transmitted.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 16th day of April, 2014 by the following vote:

AYES: **COUNCIL MEMBERS:** Rich Constantine, Marilyn Librers, Gordon Siebert,
Steve Tate
NOES: **COUNCIL MEMBERS:** None
ABSTAIN: **COUNCIL MEMBERS:** None
ABSENT: **COUNCIL MEMBERS:** Larry Carr

ATTEST:


IRMA TORREZ
City Clerk

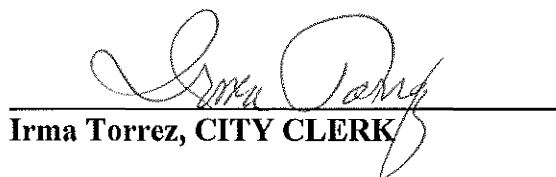

STEVE TATE, Mayor

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 6851, adopted by the City Council at the meeting held on April 16, 2014.

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

DATE: 4/21/2014


Irma Torrez, CITY CLERK

Attachment: Resolution 6851 [Revision 1] (2653 : City Position on SB50)



17575 Peak Avenue
Morgan Hill, CA 95037-4128
TEL: (408) 779-7271
FAX: (408) 779-3117
www.morganhill.ca.gov

January 27, 2020

The Honorable Scott Wiener
Senator, California State Senate
State Capitol Building, Room 5100
Sacramento, CA 95814

SUBJECT: **SB 50 (Wiener) – Oppose Unless Amended**
Planning and Zoning. Housing Development Incentives
Oppose Unless Amended (as amended 01/06/2020)

Dear Senator Wiener:

What is challenging about the Bill?

SB 330 and SB 50 make it more difficult to produce housing at deep affordability levels, by removing land from supply and allowing developers to build market rate units. The Bill should require deeper levels of affordability and/or donation of land for deeply affordable units.

SB 330, exacerbated by SB 50, allows significant amounts of land inventory to be locked up by developers for market rate housing (in which category Morgan Hill has already achieved 460% for the current Regional Housing Needs Allocation (RHNA) cycle) to achieve maximum profit, not affordable projects. Although the City has an Inclusionary Housing requirement to build 15% of a project as affordable, this is a miniscule achievement compared to the extensive need to produce units that are affordable, and that cities are charged with producing at all income levels. To wit, the City's RHNA allocation suggests that 66% of the fair share housing production should be at some affordability level. While an inclusionary ordinance is helpful, it is not the silver bullet solution that will allow cities to achieve their RHNA numbers *by income category*, especially the very low. Nor do inclusionary housing ordinances yield supportive housing, housing with service enrichment, housing for individuals with disabilities, Vets or Transitional Aged Youth.

This bill will make it more challenging for affordable housing developers to purchase land. The bill essentially opens the flood gates, and affordable housing developers will be competing with market rate developers for the remaining inventory of land. It's an unfair competition considering the underwriting criteria and profit margins for affordable housing developers are completely different and regulated by funding sources. Some higher measure of affordability must accompany incentives being given to development through SB 50. At a minimum, developments should be required to quantify the increased profitability of a project afforded the advantages of SB 50, and contribute those profits to the local affordable housing fund, or better yet, be required to set aside land, units or both, for the provision of affordable homes.

Additionally, the extra stress placed on the cost of ensuring local infrastructure, i.e. streets, sewers, schools, and public safety cannot be underestimated. Cities collect small amounts of impact fees at the point of permitting, proportionate to the project, however the infrastructure must be in place before the

home is built; thus, requiring cities to have infrastructure dollars in advance of the housing being built. The cost of implementing necessary infrastructure is usually much greater and there is an issue of timing.

Consider opportunities for providing additional revenue to the local community to pay for infrastructure improvements, especially cities with high concentrations of projects receiving welfare exemptions from annual property taxes.

- **Morgan Hill foregoes more than \$375,000 in annual property taxes from our exempt housing projects. This is the equivalent of approximately two police officers. Subsequently, we continue to build (3 projects in 2018 and one in 2019) and seek out non-profit partners to create new affordable units. Perhaps incentives to cities for their production are in order.**

SB 50 does nothing to attract and facilitate affordable housing projects in the City.

SB 50 encourages development of market rate housing, and thwarts efforts of affordable housing developers to compete in the construction market. When all the land is gone, where will the affordable units be built?

We recognize there is a housing shortage in California, but unless there is an intentional mechanism that proportionally ties a city's issuance of building permits to the designated regional housing goals (RHNA) of a city *by income category*, there will be a devastating and irreversible missed opportunity to ensure that affordable projects are incentivized and prioritized. For example, the City of Morgan Hill has been assigned RHNA goals of which 66% are designated affordable units. While the City strives to meet those goals, without anything to pace this development and require affordability, we expect that the remaining inventory of land will be swooped up by market rate developers. While this Bill may achieve more units by the numbers and add to the State's inventory, it will not lead to a significant amount of affordability. This is especially concerning in areas such as Morgan Hill.

What do we recommend for consideration?

Cities have one chance to get this right and ensure affordability, once the land is developed, the opportunity to ensure affordability will have passed.

- **Ideally there should be a connection between the preservation/dedication of land for affordable units and issuance of building permits. Perhaps a Quimby Act for housing requiring the dedication of land for affordable units is a solution. Although, we recognize there are challenges with this suggestion, without a proportionate connection to RHNA income goals, it is highly unlikely affordability will be produced at the scale at which it is needed and or required.**

Morgan Hill just completed year 5 of the 8-year Housing Element cycle. The City has achieved 222% of the HCD goal overall; 441% of the goal in Above Moderate, 216% of Moderate Income, and 123% of Low Income. The only category lacking is very low income, of which we have over 200 units in the pipeline in 6 different projects. (See attached Exhibit A)

- **Since deeply affordable housing units generally require separate parcels to be able to utilize incentives such as tax credits, housing bonds, and welfare exemptions, preserving land for affordability makes sense.**
- **The Legislature should think about how to provide incentives to encourage residentially zoned landowners to sell their land. There are many perfect housing sites that have unwilling sellers.**

The City recognizes the greater goal and the need to increase multi-family residential housing to satisfy the market with mixed-use housing units for lower-income and middle-income families, but without controlling the actual affordability of a unit or incentivizing developers to create affordable housing, we will likely see an increase in buildings constructed for market rate higher-income residents.

Finally, aspects of SB 50 are too vague, unmanageable or just don't make sense.

- The creation of an alternative planning process for jurisdictions to develop a “local flexibility plan” still allows market rate developers, not cities, to seize and control land. Planning staffs and dollars are limited in many cities. The plan requirement language sets a bar that requires cities to solve for transportation operations and depth in affordability that are generally out of our control. It is impossible to evaluate whether the “local flexibility plan” is a viable alternative because the bill does not clearly identify the elements of the plan. In addition, the State already requires a General Plan, Housing Element, and RHNA reporting annually. Is this just another plan on top of a General Plan which SB 330 and SB 50 suspend? Does this replace the need for the Housing Element? Either or, but not both.
- What about conflicts of job poor cities, with Sensitive Community's designated by ABAG/MTC, low resource areas identified by CAL Enviroscan, who bear the cost of servicing housing within job rich counties, without the extra revenue and income that flows to those areas. SB 50 suggests that job poor cities within a job rich region should grant incentives so that those traveling to those job rich cities, will have a shorter commute. How does this support the job poor community struggling for sustainability? Why not bar job rich cities from creating more jobs without housing?
- Four-plexes in single family neighborhoods do not achieve any aforementioned housing objectives. There is no way for a community to regulate affordability restrictions on units produced in this manner. It leads to a development pattern of overcrowding and conflict in many neighborhoods without property management, such as with larger apartment developments.

For all these reasons and more, the City of Morgan Hill must oppose SB 50. This is not an affordable housing production tool, which is what is needed in California.

If you have any questions, please contact the Assistant City Manager of Development Services, Leslie Little, leslie.little@morganhill.ca.gov, 408-776-7384.

Sincerely,



Rich Constantine
Mayor

Cc: Assembly Member Robert Rivas (fax: 916-319-2130)
 Senator Bill Monning (fax: 916-651-4917)
 Seth Miller, Regional Public Affairs Manager, League of California Cities, smiller@cacities.org
 Meg Desmond, League of California Cities, cityletters@cacities.org

EXHIBIT A

City of Morgan Hill Regional Housing Needs Allocation #'s (2014-2019) - HCD									Projection		
Income Level	RHNA # Allocated to MH	Permits Issued 2014/ 2015	Permits Issued 2016	Permits Issued 2017	Permits Issued 2018	Permits Issued 2019	Total	HCD % Met	HCD Remaining Allocation	Pipeline	Units Still needed
Very Low Income up to 50% AMI (includes ELI)	273	12	29	0	39	0	80	29%	193	98*	95*
Low Income 51% to 80% AMI	154	118	23	13	24	11	189	123%	0	66*	-101*
Moderate Income 81% to 120% AMI	185	107	6	9	263	14	399	216%	0	352**	-566**
Above Moderate Income/Market Rate more than 120% AMI	316	647	219	192	193	142	1393	441%	0	TBD	-1077
Total	928	884	277	214	519	167	2061	222%	193	516	95
* MWest Project included (78 VLI) * Beacon Project Included (20 VLI and 61 LI)											
**Non – Deed Restricted Moderate Units Included – NOT yet issued: (311 MWest, 8 Borello (ADU's), Already Issued and Reported: 167 Evergreen, 83 Sunsweet 11 Borello, and 61 Diamond Creek											

AMENDED IN SENATE JANUARY 6, 2020

AMENDED IN SENATE JUNE 4, 2019

AMENDED IN SENATE MAY 1, 2019

AMENDED IN SENATE MARCH 11, 2019

SENATE BILL

No. 50

Introduced by Senator Wiener

**(Coauthors: Senators Caballero, Hueso, McGuire, Moorlach,
Skinner, and Stone Roth, and Skinner)**

(Coauthors: Assembly Members Chu, Diep, Fong, Kalra, Kiley, Low,
McCarty, *Quirk-Silva*, Robert Rivas, Ting, and Wicks)

December 3, 2018

An act to amend Section 65589.5 of, to add Sections 65913.5 and 65913.6 to, and to add Chapter 4.35 (commencing with Section 65918.50) to Division 1 of Title 7 of, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Wiener. Planning and zoning: housing development: streamlined approval: incentives.

(1) Existing law authorizes a development proponent to submit an application for a multifamily housing development that satisfies specified planning objective standards to be subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit.

This bill would authorize a development proponent of a neighborhood multifamily project located on an eligible parcel to submit an application for a streamlined, ministerial approval process that is not subject to a conditional use permit. The bill would define a "neighborhood

multifamily project” to mean a project to construct a multifamily structure on vacant land, or to convert an existing structure that does not require substantial exterior alteration into a multifamily structure, consisting of up to 4 residential dwelling units and that meets local height, setback, and lot coverage zoning requirements as they existed on July 1, 2019. The bill would also define “eligible parcel” to mean a parcel that meets specified requirements, including requirements relating to the location of the parcel and restricting the demolition of certain housing development that may already exist on the site.

This bill would require a local agency to notify the development proponent in writing if the local agency determines that the development conflicts with any of the requirements provided for streamlined ministerial approval within 60 days of the submission of the development to the local agency. If the local agency does not notify the development proponent within this time period, the development would be deemed to comply with those requirements. The bill would limit the authority of a local agency to impose parking standards or requirements on a streamlined development approved pursuant to these provisions, as provided. The bill would provide that the approval of a project under these provisions expires automatically after 3 years, unless that project qualifies for a one-time, one-year extension of that approval. The bill would provide that approval pursuant to its provisions would remain valid for 3 years and remain valid thereafter, so long as vertical construction of the development has begun and is in progress, and would authorize a discretionary one-year extension, as provided. The bill would prohibit a local agency from adopting any requirement that applies to a project solely or partially on the basis that the project receives ministerial or streamlined approval pursuant to these provisions.

This bill would allow a local agency to exempt a project from the streamlined ministerial approval process described above by finding that the project will cause a specific adverse impact to public health and safety, and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a

significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill would establish a streamlined ministerial approval process for neighborhood multifamily projects, thereby exempting these projects from the CEQA approval process.

(2) Existing law, known as the density bonus law, requires, when an applicant proposes a housing development within the jurisdiction of a local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or for the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

This bill, on or after January 1, 2023, would require a *specified* city, county, or city and county to grant upon request an equitable communities incentive when a development proponent seeks and agrees to construct a residential development, as defined, that satisfies specified criteria, including, among other things, that the residential development is either a job-rich housing project or a transit-rich housing project, as those terms are defined; the site does not contain, or has not contained, housing occupied by tenants or accommodations withdrawn from rent or lease in accordance with specified law within specified time periods; and the residential development complies with specified additional requirements under existing law. The bill would impose additional requirements on a residential development located within a county with a population equal to or less than 600,000. The bill would require that a residential development within a county with a population greater than 600,000 that is eligible for an equitable communities incentive receive, upon request, waivers from maximum controls on density; minimum automobile parking requirements greater than 0.5 parking spots per unit; and specified additional waivers if the residential development is located within a $\frac{1}{2}$ -mile or $\frac{1}{4}$ -mile radius of a major transit stop, as defined. For a residential development within a county with a population equal to or less than 600,000, the bill would instead require that the incentive provide waivers from maximum controls on density, subject to certain limitations; maximum height limitations less than or equal to one story, or 15 feet, above the highest allowable height

for mixed use or residential use; certain requirements governing the size of the parcel and the area that the building may occupy; and minimum automobile parking requirements, as provided. The bill would require a local government to grant an equitable communities incentive unless it makes a specified finding regarding the effects of the incentive on any real property or historic district that is listed on a federal or state register of historical resources. The bill would authorize a local government to modify or expand the terms of an equitable communities incentive, provided that the equitable communities incentive is consistent with these provisions.

The bill would delay implementation of these provisions in potentially sensitive communities, as defined, until July 1, 2023. The bill would further delay implementation of these provisions in sensitive communities, determined as provided, until January 1, 2026, unless the city or county in which the area is located votes to make these provisions applicable after a specified petition and public hearing process. On and after January 1, 2026, the bill would apply these provisions to a sensitive community unless the city or county adopts a community plan for the area that meets certain requirements.

The bill would also exempt from these provisions a local government that has a local flexibility plan that has been reviewed and certified by the Department of Housing and Community Development, as specified. The bill, on or before July 1, 2021, would require the Governor's Office of Planning and Research, in consultation with the Department of Housing and Community Development, to develop and publish on its internet website rules, regulations, or guidelines for the submission and approval of a local flexibility plan, as specified. The bill, on or after July 1, 2021, would authorize a local government to submit a local flexibility plan for review and approval by the Department of Housing and Community Development pursuant to those rules, regulations, or guidelines.

The bill would include findings that the changes proposed by these provisions address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities. ~~The bill would also delay implementation of these provisions in potentially sensitive communities, as defined, until July 1, 2020. The bill would further delay implementation of these provisions in sensitive communities, determined as provided, until January 1, 2026, unless the city or county in which the area is located votes to make these provisions applicable after a specified petition and public hearing process. On and~~

after January 1, 2026, the bill would apply these provisions to a sensitive community unless the city or county adopts a community plan for the area that meets certain requirements.

The Housing Accountability Act prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project that complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time the application for the project is deemed complete unless the local agency makes specified written findings based on a preponderance of the evidence in the record. That law provides that the receipt of a density bonus is not a valid basis on which to find a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision of that act.

This bill would additionally provide that the receipt of an equitable communities incentive is not a valid basis on which to find a proposed housing development is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision of that act.

(3) By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 65589.5 of the Government Code is~~
- 2 ~~amended to read:~~
- 3 ~~65589.5. (a) (1) The Legislature finds and declares all of the~~
- 4 ~~following:~~
- 5 ~~(A) The lack of housing, including emergency shelters, is a~~
- 6 ~~critical problem that threatens the economic, environmental, and~~
- 7 ~~social quality of life in California.~~
- 8 ~~(B) California housing has become the most expensive in the~~
- 9 ~~nation. The excessive cost of the state's housing supply is partially~~

1 caused by activities and policies of many local governments that
2 limit the approval of housing, increase the cost of land for housing,
3 and require that high fees and exactions be paid by producers of
4 housing.

5 (C) Among the consequences of those actions are discrimination
6 against low-income and minority households, lack of housing to
7 support employment growth, imbalance in jobs and housing,
8 reduced mobility, urban sprawl, excessive commuting, and air
9 quality deterioration.

10 (D) Many local governments do not give adequate attention to
11 the economic, environmental, and social costs of decisions that
12 result in disapproval of housing development projects, reduction
13 in density of housing projects, and excessive standards for housing
14 development projects.

15 (2) In enacting the amendments made to this section by the act
16 adding this paragraph, the Legislature further finds and declares
17 the following:

18 (A) California has a housing supply and affordability crisis of
19 historic proportions. The consequences of failing to effectively
20 and aggressively confront this crisis are hurting millions of
21 Californians, robbing future generations of the chance to call
22 California home, stifling economic opportunities for workers and
23 businesses, worsening poverty and homelessness, and undermining
24 the state's environmental and climate objectives.

25 (B) While the causes of this crisis are multiple and complex,
26 the absence of meaningful and effective policy reforms to
27 significantly enhance the approval and supply of housing affordable
28 to Californians of all income levels is a key factor.

29 (C) The crisis has grown so acute in California that supply,
30 demand, and affordability fundamentals are characterized in the
31 negative: underserved demands, constrained supply, and protracted
32 unaffordability.

33 (D) According to reports and data, California has accumulated
34 an unmet housing backlog of nearly 2,000,000 units and must
35 provide for at least 180,000 new units annually to keep pace with
36 growth through 2025.

37 (E) California's overall homeownership rate is at its lowest level
38 since the 1940s. The state ranks 49th out of the 50 states in
39 homeownership rates as well as in the supply of housing per capita.

1 Only one-half of California's households are able to afford the
2 cost of housing in their local regions.

3 (F) Lack of supply and rising costs are compounding inequality
4 and limiting advancement opportunities for many Californians.

5 (G) The majority of California renters, more than 3,000,000
6 households, pay more than 30 percent of their income toward rent
7 and nearly one-third, more than 1,500,000 households, pay more
8 than 50 percent of their income toward rent.

9 (H) When Californians have access to safe and affordable
10 housing, they have more money for food and health care; they are
11 less likely to become homeless and in need of
12 government-subsidized services; their children do better in school;
13 and businesses have an easier time recruiting and retaining
14 employees.

15 (I) An additional consequence of the state's cumulative housing
16 shortage is a significant increase in greenhouse gas emissions
17 caused by the displacement and redirection of populations to states
18 with greater housing opportunities, particularly working- and
19 middle-class households. California's cumulative housing shortfall
20 therefore has not only national but international environmental
21 consequences.

22 (J) California's housing picture has reached a crisis of historic
23 proportions despite the fact that, for decades, the Legislature has
24 enacted numerous statutes intended to significantly increase the
25 approval, development, and affordability of housing for all income
26 levels, including this section.

27 (K) The Legislature's intent in enacting this section in 1982 and
28 in expanding its provisions since then was to significantly increase
29 the approval and construction of new housing for all economic
30 segments of California's communities by meaningfully and
31 effectively curbing the capability of local governments to deny,
32 reduce the density for, or render infeasible housing development
33 projects and emergency shelters. That intent has not been fulfilled.

34 (L) It is the policy of the state that this section should be
35 interpreted and implemented in a manner to afford the fullest
36 possible weight to the interest of, and the approval and provision
37 of, housing.

38 (3) It is the intent of the Legislature that the conditions that
39 would have a specific, adverse impact upon the public health and

1 safety, as described in paragraph (2) of subdivision (d) and
2 paragraph (1) of subdivision (j), arise infrequently.

3 (b) It is the policy of the state that a local government not reject
4 or make infeasible housing development projects, including
5 emergency shelters, that contribute to meeting the need determined
6 pursuant to this article without a thorough analysis of the economic,
7 social, and environmental effects of the action and without
8 complying with subdivision (d).

9 (c) The Legislature also recognizes that premature and
10 unnecessary development of agricultural lands for urban uses
11 continues to have adverse effects on the availability of those lands
12 for food and fiber production and on the economy of the state.
13 Furthermore, it is the policy of the state that development should
14 be guided away from prime agricultural lands; therefore, in
15 implementing this section, local jurisdictions should encourage,
16 to the maximum extent practicable, in filling existing urban areas.

17 (d) A local agency shall not disapprove a housing development
18 project, including farmworker housing as defined in subdivision
19 (h) of Section 50199.7 of the Health and Safety Code, for very
20 low, low-, or moderate-income households, or an emergency
21 shelter, or condition approval in a manner that renders the housing
22 development project infeasible for development for the use of very
23 low, low-, or moderate-income households, or an emergency
24 shelter, including through the use of design review standards,
25 unless it makes written findings, based upon a preponderance of
26 the evidence in the record, as to one of the following:

27 (1) The jurisdiction has adopted a housing element pursuant to
28 this article that has been revised in accordance with Section 65588,
29 is in substantial compliance with this article, and the jurisdiction
30 has met or exceeded its share of the regional housing need
31 allocation pursuant to Section 65584 for the planning period for
32 the income category proposed for the housing development project,
33 provided that any disapproval or conditional approval shall not be
34 based on any of the reasons prohibited by Section 65008. If the
35 housing development project includes a mix of income categories,
36 and the jurisdiction has not met or exceeded its share of the regional
37 housing need for one or more of those categories, then this
38 paragraph shall not be used to disapprove or conditionally approve
39 the housing development project. The share of the regional housing
40 need met by the jurisdiction shall be calculated consistently with

1 the forms and definitions that may be adopted by the Department
2 of Housing and Community Development pursuant to Section
3 65400. In the case of an emergency shelter, the jurisdiction shall
4 have met or exceeded the need for emergency shelter, as identified
5 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
6 disapproval or conditional approval pursuant to this paragraph
7 shall be in accordance with applicable law, rule, or standards.

8 (2) The housing development project or emergency shelter as
9 proposed would have a specific, adverse impact upon the public
10 health or safety, and there is no feasible method to satisfactorily
11 mitigate or avoid the specific, adverse impact without rendering
12 the development unaffordable to low- and moderate-income
13 households or rendering the development of the emergency shelter
14 financially infeasible. As used in this paragraph, a “specific,
15 adverse impact” means a significant, quantifiable, direct, and
16 unavoidable impact, based on objective, identified written public
17 health or safety standards, policies, or conditions as they existed
18 on the date the application was deemed complete. Inconsistency
19 with the zoning ordinance or general plan land use designation
20 shall not constitute a specific, adverse impact upon the public
21 health or safety.

22 (3) The denial of the housing development project or imposition
23 of conditions is required in order to comply with specific state or
24 federal law, and there is no feasible method to comply without
25 rendering the development unaffordable to low- and
26 moderate-income households or rendering the development of the
27 emergency shelter financially infeasible.

28 (4) The housing development project or emergency shelter is
29 proposed on land zoned for agriculture or resource preservation
30 that is surrounded on at least two sides by land being used for
31 agricultural or resource preservation purposes, or which does not
32 have adequate water or wastewater facilities to serve the project.

33 (5) The housing development project or emergency shelter is
34 inconsistent with both the jurisdiction’s zoning ordinance and
35 general plan land use designation as specified in any element of
36 the general plan as it existed on the date the application was
37 deemed complete, and the jurisdiction has adopted a revised
38 housing element in accordance with Section 65588 that is in
39 substantial compliance with this article. For purposes of this
40 section, a change to the zoning ordinance or general plan land use

1 designation subsequent to the date the application was deemed
2 complete shall not constitute a valid basis to disapprove or
3 condition approval of the housing development project or
4 emergency shelter.

5 (A) This paragraph cannot be utilized to disapprove or
6 conditionally approve a housing development project if the housing
7 development project is proposed on a site that is identified as
8 suitable or available for very low, low-, or moderate-income
9 households in the jurisdiction's housing element, and consistent
10 with the density specified in the housing element, even though it
11 is inconsistent with both the jurisdiction's zoning ordinance and
12 general plan land use designation.

13 (B) If the local agency has failed to identify in the inventory of
14 land in its housing element sites that can be developed for housing
15 within the planning period and are sufficient to provide for the
16 jurisdiction's share of the regional housing need for all income
17 levels pursuant to Section 65584, then this paragraph shall not be
18 utilized to disapprove or conditionally approve a housing
19 development project proposed for a site designated in any element
20 of the general plan for residential uses or designated in any element
21 of the general plan for commercial uses if residential uses are
22 permitted or conditionally permitted within commercial
23 designations. In any action in court, the burden of proof shall be
24 on the local agency to show that its housing element does identify
25 adequate sites with appropriate zoning and development standards
26 and with services and facilities to accommodate the local agency's
27 share of the regional housing need for the very low, low-, and
28 moderate-income categories.

29 (C) If the local agency has failed to identify a zone or zones
30 where emergency shelters are allowed as a permitted use without
31 a conditional use or other discretionary permit, has failed to
32 demonstrate that the identified zone or zones include sufficient
33 capacity to accommodate the need for emergency shelter identified
34 in paragraph (7) of subdivision (a) of Section 65583, or has failed
35 to demonstrate that the identified zone or zones can accommodate
36 at least one emergency shelter, as required by paragraph (4) of
37 subdivision (a) of Section 65583, then this paragraph shall not be
38 utilized to disapprove or conditionally approve an emergency
39 shelter proposed for a site designated in any element of the general
40 plan for industrial, commercial, or multifamily residential uses. In

1 any action in court, the burden of proof shall be on the local agency
2 to show that its housing element does satisfy the requirements of
3 paragraph (4) of subdivision (a) of Section 65583.

4 (e) ~~Nothing in this section shall be construed to relieve the local~~
5 ~~agency from complying with the congestion management program~~
6 ~~required by Chapter 2.6 (commencing with Section 65088) of~~
7 ~~Division 1 of Title 7 or the California Coastal Act of 1976~~
8 ~~(Division 20 (commencing with Section 30000) of the Public~~
9 ~~Resources Code). Nothing in this section shall be construed to~~
10 ~~relieve the local agency from making one or more of the findings~~
11 ~~required pursuant to Section 21081 of the Public Resources Code~~
12 ~~or otherwise complying with the California Environmental Quality~~
13 ~~Act (Division 13 (commencing with Section 21000) of the Public~~
14 ~~Resources Code).~~

15 (f) (1) ~~Nothing in this section shall be construed to prohibit a~~
16 ~~local agency from requiring the housing development project to~~
17 ~~comply with objective, quantifiable, written development standards,~~
18 ~~conditions, and policies appropriate to, and consistent with, meeting~~
19 ~~the jurisdiction's share of the regional housing need pursuant to~~
20 ~~Section 65584. However, the development standards, conditions,~~
21 ~~and policies shall be applied to facilitate and accommodate~~
22 ~~development at the density permitted on the site and proposed by~~
23 ~~the development.~~

24 (2) ~~Nothing in this section shall be construed to prohibit a local~~
25 ~~agency from requiring an emergency shelter project to comply~~
26 ~~with objective, quantifiable, written development standards,~~
27 ~~conditions, and policies that are consistent with paragraph (4) of~~
28 ~~subdivision (a) of Section 65583 and appropriate to, and consistent~~
29 ~~with, meeting the jurisdiction's need for emergency shelter, as~~
30 ~~identified pursuant to paragraph (7) of subdivision (a) of Section~~
31 ~~65583. However, the development standards, conditions, and~~
32 ~~policies shall be applied by the local agency to facilitate and~~
33 ~~accommodate the development of the emergency shelter project.~~

34 (3) ~~This section does not prohibit a local agency from imposing~~
35 ~~fees and other exactions otherwise authorized by law that are~~
36 ~~essential to provide necessary public services and facilities to the~~
37 ~~housing development project or emergency shelter.~~

38 (4) ~~For purposes of this section, a housing development project~~
39 ~~or emergency shelter shall be deemed consistent, compliant, and~~
40 ~~in conformity with an applicable plan, program, policy, ordinance,~~

~~1 standard, requirement, or other similar provision if there is
2 substantial evidence that would allow a reasonable person to
3 conclude that the housing development project or emergency
4 shelter is consistent, compliant, or in conformity.~~

~~5 (g) This section shall be applicable to charter cities because the
6 Legislature finds that the lack of housing, including emergency
7 shelter, is a critical statewide problem.~~

~~8 (h) The following definitions apply for the purposes of this
9 section:~~

~~10 (1) "Feasible" means capable of being accomplished in a
11 successful manner within a reasonable period of time, taking into
12 account economic, environmental, social, and technological factors.~~

~~13 (2) "Housing development project" means a use consisting of
14 any of the following:~~

~~15 (A) Residential units only.~~

~~16 (B) Mixed-use developments consisting of residential and
17 nonresidential uses with at least two-thirds of the square footage
18 designated for residential use.~~

~~19 (C) Transitional housing or supportive housing.~~

~~20 (3) "Housing for very low, low-, or moderate-income
21 households" means that either (A) at least 20 percent of the total
22 units shall be sold or rented to lower income households, as defined
23 in Section 50079.5 of the Health and Safety Code, or (B) 100
24 percent of the units shall be sold or rented to persons and families
25 of moderate income as defined in Section 50093 of the Health and
26 Safety Code, or persons and families of middle income, as defined
27 in Section 65008 of this code. Housing units targeted for lower
28 income households shall be made available at a monthly housing
29 cost that does not exceed 30 percent of 60 percent of area median
30 income with adjustments for household size made in accordance
31 with the adjustment factors on which the lower income eligibility
32 limits are based. Housing units targeted for persons and families
33 of moderate income shall be made available at a monthly housing
34 cost that does not exceed 30 percent of 100 percent of area median
35 income with adjustments for household size made in accordance
36 with the adjustment factors on which the moderate-income
37 eligibility limits are based.~~

~~38 (4) "Area median income" means area median income as
39 periodically established by the Department of Housing and
40 Community Development pursuant to Section 50093 of the Health~~

1 and Safety Code. The developer shall provide sufficient legal
2 commitments to ensure continued availability of units for very low
3 or low-income households in accordance with the provisions of
4 this subdivision for 30 years.

5 (5) “Disapprove the housing development project” includes any
6 instance in which a local agency does either of the following:

7 (A) Votes on a proposed housing development project
8 application and the application is disapproved, including any
9 required land use approvals or entitlements necessary for the
10 issuance of a building permit.

11 (B) Fails to comply with the time periods specified in
12 subdivision (a) of Section 65950. An extension of time pursuant
13 to Article 5 (commencing with Section 65950) shall be deemed to
14 be an extension of time pursuant to this paragraph.

15 (i) If any city, county, or city and county denies approval or
16 imposes conditions, including design changes, lower density, or
17 a reduction of the percentage of a lot that may be occupied by a
18 building or structure under the applicable planning and zoning in
19 force at the time the application is deemed complete pursuant to
20 Section 65943, that have a substantial adverse effect on the viability
21 or affordability of a housing development for very low, low-, or
22 moderate-income households, and the denial of the development
23 or the imposition of conditions on the development is the subject
24 of a court action which challenges the denial or the imposition of
25 conditions, then the burden of proof shall be on the local legislative
26 body to show that its decision is consistent with the findings as
27 described in subdivision (d) and that the findings are supported by
28 a preponderance of the evidence in the record. For purposes of this
29 section, “lower density” includes any conditions that have the same
30 effect or impact on the ability of the project to provide housing.

31 (j) (1) When a proposed housing development project complies
32 with applicable, objective general plan, zoning, and subdivision
33 standards and criteria, including design review standards, in effect
34 at the time that the housing development project’s application is
35 determined to be complete, but the local agency proposes to
36 disapprove the project or to impose a condition that the project be
37 developed at a lower density, the local agency shall base its
38 decision regarding the proposed housing development project upon
39 written findings supported by a preponderance of the evidence on
40 the record that both of the following conditions exist:

~~(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.~~

~~(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.~~

~~(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:~~

~~(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.~~

~~(ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.~~

~~(B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.~~

~~(3) For purposes of this section, the receipt of a density bonus pursuant to Section 65915 or an equitable communities incentive pursuant to Section 65918.51 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.~~

~~(4) For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project.~~

~~(5) For purposes of this section, “lower density” includes any conditions that have the same effect or impact on the ability of the project to provide housing.~~

~~(k) (1) (A) The applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that either (i) the local agency, in violation of subdivision (d), disapproved a housing development project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making findings supported by a preponderance of the evidence, or (ii) the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria, or imposed a condition that the project be developed at a lower density, without making the findings required by this section or without making findings supported by a preponderance of the evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the housing development project or emergency shelter. The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved~~

1 the housing development or emergency shelter in violation of this
 2 section. The court shall retain jurisdiction to ensure that its order
 3 or judgment is carried out and shall award reasonable attorney's
 4 fees and costs of suit to the plaintiff or petitioner, except under
 5 extraordinary circumstances in which the court finds that awarding
 6 fees would not further the purposes of this section. For purposes
 7 of this section, "lower density" includes conditions that have the
 8 same effect or impact on the ability of the project to provide
 9 housing.

10 (B) (i) Upon a determination that the local agency has failed
 11 to comply with the order or judgment compelling compliance with
 12 this section within 60 days issued pursuant to subparagraph (A),
 13 the court shall impose fines on a local agency that has violated this
 14 section and require the local agency to deposit any fine levied
 15 pursuant to this subdivision into a local housing trust fund. The
 16 local agency may elect to instead deposit the fine into the Building
 17 Homes and Jobs Trust Fund, if Senate Bill 2 of the 2017-18
 18 Regular Session is enacted, or otherwise in the Housing
 19 Rehabilitation Loan Fund. The fine shall be in a minimum amount
 20 of ten thousand dollars (\$10,000) per housing unit in the housing
 21 development project on the date the application was deemed
 22 complete pursuant to Section 65943. In determining the amount
 23 of fine to impose, the court shall consider the local agency's
 24 progress in attaining its target allocation of the regional housing
 25 need pursuant to Section 65584 and any prior violations of this
 26 section. Fines shall not be paid out of funds already dedicated to
 27 affordable housing, including, but not limited to, Low and
 28 Moderate Income Housing Asset Funds, funds dedicated to housing
 29 for very low, low-, and moderate-income households, and federal
 30 HOME Investment Partnerships Program and Community
 31 Development Block Grant Program funds. The local agency shall
 32 commit and expend the money in the local housing trust fund
 33 within five years for the sole purpose of financing newly
 34 constructed housing units affordable to extremely low, very low,
 35 or low-income households. After five years, if the funds have not
 36 been expended, the money shall revert to the state and be deposited
 37 in the Building Homes and Jobs Trust Fund, if Senate Bill 2 of the
 38 2017-18 Regular Session is enacted, or otherwise in the Housing
 39 Rehabilitation Loan Fund, for the sole purpose of financing newly

1 constructed housing units affordable to extremely low, very low,
2 or low-income households.

3 (ii) If any money derived from a fine imposed pursuant to this
4 subparagraph is deposited in the Housing Rehabilitation Loan
5 Fund, then, notwithstanding Section 50661 of the Health and Safety
6 Code, that money shall be available only upon appropriation by
7 the Legislature.

8 (C) If the court determines that its order or judgment has not
9 been carried out within 60 days, the court may issue further orders
10 as provided by law to ensure that the purposes and policies of this
11 section are fulfilled, including, but not limited to, an order to vacate
12 the decision of the local agency and to approve the housing
13 development project, in which case the application for the housing
14 development project, as proposed by the applicant at the time the
15 local agency took the initial action determined to be in violation
16 of this section, along with any standard conditions determined by
17 the court to be generally imposed by the local agency on similar
18 projects, shall be deemed to be approved unless the applicant
19 consents to a different decision or action by the local agency.

20 (2) For purposes of this subdivision, “housing organization”
21 means a trade or industry group whose local members are primarily
22 engaged in the construction or management of housing units or a
23 nonprofit organization whose mission includes providing or
24 advocating for increased access to housing for low-income
25 households and have filed written or oral comments with the local
26 agency prior to action on the housing development project. A
27 housing organization may only file an action pursuant to this
28 section to challenge the disapproval of a housing development by
29 a local agency. A housing organization shall be entitled to
30 reasonable attorney’s fees and costs if it is the prevailing party in
31 an action to enforce this section.

32 (I) If the court finds that the local agency (1) acted in bad faith
33 when it disapproved or conditionally approved the housing
34 development or emergency shelter in violation of this section and
35 (2) failed to carry out the court’s order or judgment within 60 days
36 as described in subdivision (k), the court, in addition to any other
37 remedies provided by this section, shall multiply the fine
38 determined pursuant to subparagraph (B) of paragraph (1) of
39 subdivision (k) by a factor of five. For purposes of this section,

1 “bad faith” includes, but is not limited to, an action that is frivolous
2 or otherwise entirely without merit.

3 ~~(m) Any action brought to enforce the provisions of this section~~
4 ~~shall be brought pursuant to Section 1094.5 of the Code of Civil~~
5 ~~Procedure, and the local agency shall prepare and certify the record~~
6 ~~of proceedings in accordance with subdivision (c) of Section 1094.6~~
7 ~~of the Code of Civil Procedure no later than 30 days after the~~
8 ~~petition is served, provided that the cost of preparation of the record~~
9 ~~shall be borne by the local agency, unless the petitioner elects to~~
10 ~~prepare the record as provided in subdivision (n) of this section.~~
11 ~~A petition to enforce the provisions of this section shall be filed~~
12 ~~and served no later than 90 days from the later of (1) the effective~~
13 ~~date of a decision of the local agency imposing conditions on,~~
14 ~~disapproving, or any other final action on a housing development~~
15 ~~project or (2) the expiration of the time periods specified in~~
16 ~~subparagraph (B) of paragraph (5) of subdivision (h). Upon entry~~
17 ~~of the trial court’s order, a party may, in order to obtain appellate~~
18 ~~review of the order, file a petition within 20 days after service~~
19 ~~upon it of a written notice of the entry of the order, or within such~~
20 ~~further time not exceeding an additional 20 days as the trial court~~
21 ~~may for good cause allow, or may appeal the judgment or order~~
22 ~~of the trial court under Section 904.1 of the Code of Civil~~
23 ~~Procedure. If the local agency appeals the judgment of the trial~~
24 ~~court, the local agency shall post a bond, in an amount to be~~
25 ~~determined by the court, to the benefit of the plaintiff if the plaintiff~~
26 ~~is the project applicant.~~

27 ~~(n) In any action, the record of the proceedings before the local~~
28 ~~agency shall be filed as expeditiously as possible and,~~
29 ~~notwithstanding Section 1094.6 of the Code of Civil Procedure or~~
30 ~~subdivision (m) of this section, all or part of the record may be~~
31 ~~prepared (1) by the petitioner with the petition or petitioner’s points~~
32 ~~and authorities, (2) by the respondent with respondent’s points and~~
33 ~~authorities, (3) after payment of costs by the petitioner, or (4) as~~
34 ~~otherwise directed by the court. If the expense of preparing the~~
35 ~~record has been borne by the petitioner and the petitioner is the~~
36 ~~prevailing party, the expense shall be taxable as costs.~~

37 ~~(o) This section shall be known, and may be cited, as the~~
38 ~~Housing Accountability Act.~~

1 SECTION 1. *Section 65589.5 of the Government Code, as*
2 *amended by Section 3.1 of Chapter 665 of the Statutes of 2019, is*
3 *amended to read:*

4 65589.5. (a) (1) The Legislature finds and declares all of the
5 following:

6 (A) The lack of housing, including emergency shelters, is a
7 critical problem that threatens the economic, environmental, and
8 social quality of life in California.

9 (B) California housing has become the most expensive in the
10 nation. The excessive cost of the state's housing supply is partially
11 caused by activities and policies of many local governments that
12 limit the approval of housing, increase the cost of land for housing,
13 and require that high fees and exactions be paid by producers of
14 housing.

15 (C) Among the consequences of those actions are discrimination
16 against low-income and minority households, lack of housing to
17 support employment growth, imbalance in jobs and housing,
18 reduced mobility, urban sprawl, excessive commuting, and air
19 quality deterioration.

20 (D) Many local governments do not give adequate attention to
21 the economic, environmental, and social costs of decisions that
22 result in disapproval of housing development projects, reduction
23 in density of housing projects, and excessive standards for housing
24 development projects.

25 (2) In enacting the amendments made to this section by the act
26 adding this paragraph, the Legislature further finds and declares
27 the following:

28 (A) California has a housing supply and affordability crisis of
29 historic proportions. The consequences of failing to effectively
30 and aggressively confront this crisis are hurting millions of
31 Californians, robbing future generations of the chance to call
32 California home, stifling economic opportunities for workers and
33 businesses, worsening poverty and homelessness, and undermining
34 the state's environmental and climate objectives.

35 (B) While the causes of this crisis are multiple and complex,
36 the absence of meaningful and effective policy reforms to
37 significantly enhance the approval and supply of housing affordable
38 to Californians of all income levels is a key factor.

39 (C) The crisis has grown so acute in California that supply,
40 demand, and affordability fundamentals are characterized in the

1 negative: underserved demands, constrained supply, and protracted
2 unaffordability.

3 (D) According to reports and data, California has accumulated
4 an unmet housing backlog of nearly 2,000,000 units and must
5 provide for at least 180,000 new units annually to keep pace with
6 growth through 2025.

7 (E) California's overall homeownership rate is at its lowest level
8 since the 1940s. The state ranks 49th out of the 50 states in
9 homeownership rates as well as in the supply of housing per capita.
10 Only one-half of California's households are able to afford the
11 cost of housing in their local regions.

12 (F) Lack of supply and rising costs are compounding inequality
13 and limiting advancement opportunities for many Californians.

14 (G) The majority of California renters, more than 3,000,000
15 households, pay more than 30 percent of their income toward rent
16 and nearly one-third, more than 1,500,000 households, pay more
17 than 50 percent of their income toward rent.

18 (H) When Californians have access to safe and affordable
19 housing, they have more money for food and health care; they are
20 less likely to become homeless and in need of
21 government-subsidized services; their children do better in school;
22 and businesses have an easier time recruiting and retaining
23 employees.

24 (I) An additional consequence of the state's cumulative housing
25 shortage is a significant increase in greenhouse gas emissions
26 caused by the displacement and redirection of populations to states
27 with greater housing opportunities, particularly working- and
28 middle-class households. California's cumulative housing shortfall
29 therefore has not only national but international environmental
30 consequences.

31 (J) California's housing picture has reached a crisis of historic
32 proportions despite the fact that, for decades, the Legislature has
33 enacted numerous statutes intended to significantly increase the
34 approval, development, and affordability of housing for all income
35 levels, including this section.

36 (K) The Legislature's intent in enacting this section in 1982 and
37 in expanding its provisions since then was to significantly increase
38 the approval and construction of new housing for all economic
39 segments of California's communities by meaningfully and
40 effectively curbing the capability of local governments to deny,

1 reduce the density for, or render infeasible housing development
2 projects and emergency shelters. That intent has not been fulfilled.

3 (L) It is the policy of the state that this section be interpreted
4 and implemented in a manner to afford the fullest possible weight
5 to the interest of, and the approval and provision of, housing.

6 (3) It is the intent of the Legislature that the conditions that
7 would have a specific, adverse impact upon the public health and
8 safety, as described in paragraph (2) of subdivision (d) and
9 paragraph (1) of subdivision (j), arise infrequently.

10 (b) It is the policy of the state that a local government not reject
11 or make infeasible housing development projects, including
12 emergency shelters, that contribute to meeting the need determined
13 pursuant to this article without a thorough analysis of the economic,
14 social, and environmental effects of the action and without
15 complying with subdivision (d).

16 (c) The Legislature also recognizes that premature and
17 unnecessary development of agricultural lands for urban uses
18 continues to have adverse effects on the availability of those lands
19 for food and fiber production and on the economy of the state.
20 Furthermore, it is the policy of the state that development should
21 be guided away from prime agricultural lands; therefore, in
22 implementing this section, local jurisdictions should encourage,
23 to the maximum extent practicable, in filling existing urban areas.

24 (d) A local agency shall not disapprove a housing development
25 project, including farmworker housing as defined in subdivision
26 (h) of Section 50199.7 of the Health and Safety Code, for very
27 low, low-, or moderate-income households, or an emergency
28 shelter, or condition approval in a manner that renders the housing
29 development project infeasible for development for the use of very
30 low, low-, or moderate-income households, or an emergency
31 shelter, including through the use of design review standards,
32 unless it makes written findings, based upon a preponderance of
33 the evidence in the record, as to one of the following:

34 (1) The jurisdiction has adopted a housing element pursuant to
35 this article that has been revised in accordance with Section 65588,
36 is in substantial compliance with this article, and the jurisdiction
37 has met or exceeded its share of the regional housing need
38 allocation pursuant to Section 65584 for the planning period for
39 the income category proposed for the housing development project,
40 provided that any disapproval or conditional approval shall not be

1 based on any of the reasons prohibited by Section 65008. If the
2 housing development project includes a mix of income categories,
3 and the jurisdiction has not met or exceeded its share of the regional
4 housing need for one or more of those categories, then this
5 paragraph shall not be used to disapprove or conditionally approve
6 the housing development project. The share of the regional housing
7 need met by the jurisdiction shall be calculated consistently with
8 the forms and definitions that may be adopted by the Department
9 of Housing and Community Development pursuant to Section
10 65400. In the case of an emergency shelter, the jurisdiction shall
11 have met or exceeded the need for emergency shelter, as identified
12 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
13 disapproval or conditional approval pursuant to this paragraph
14 shall be in accordance with applicable law, rule, or standards.

15 (2) The housing development project or emergency shelter as
16 proposed would have a specific, adverse impact upon the public
17 health or safety, and there is no feasible method to satisfactorily
18 mitigate or avoid the specific adverse impact without rendering
19 the development unaffordable to low- and moderate-income
20 households or rendering the development of the emergency shelter
21 financially infeasible. As used in this paragraph, a “specific,
22 adverse impact” means a significant, quantifiable, direct, and
23 unavoidable impact, based on objective, identified written public
24 health or safety standards, policies, or conditions as they existed
25 on the date the application was deemed complete. The following
26 shall not constitute a specific, adverse impact upon the public
27 health or safety:

28 (A) Inconsistency with the zoning ordinance or general plan
29 land use designation.

30 (B) The eligibility to claim a welfare exemption under
31 subdivision (g) of Section 214 of the Revenue and Taxation Code.

32 (3) The denial of the housing development project or imposition
33 of conditions is required in order to comply with specific state or
34 federal law, and there is no feasible method to comply without
35 rendering the development unaffordable to low- and
36 moderate-income households or rendering the development of the
37 emergency shelter financially infeasible.

38 (4) The housing development project or emergency shelter is
39 proposed on land zoned for agriculture or resource preservation
40 that is surrounded on at least two sides by land being used for

1 agricultural or resource preservation purposes, or which does not
2 have adequate water or wastewater facilities to serve the project.

3 (5) The housing development project or emergency shelter is
4 inconsistent with both the jurisdiction's zoning ordinance and
5 general plan land use designation as specified in any element of
6 the general plan as it existed on the date the application was
7 deemed complete, and the jurisdiction has adopted a revised
8 housing element in accordance with Section 65588 that is in
9 substantial compliance with this article. For purposes of this
10 section, a change to the zoning ordinance or general plan land use
11 designation subsequent to the date the application was deemed
12 complete shall not constitute a valid basis to disapprove or
13 condition approval of the housing development project or
14 emergency shelter.

15 (A) This paragraph cannot be utilized to disapprove or
16 conditionally approve a housing development project if the housing
17 development project is proposed on a site that is identified as
18 suitable or available for very low, low-, or moderate-income
19 households in the jurisdiction's housing element, and consistent
20 with the density specified in the housing element, even though it
21 is inconsistent with both the jurisdiction's zoning ordinance and
22 general plan land use designation.

23 (B) If the local agency has failed to identify in the inventory of
24 land in its housing element sites that can be developed for housing
25 within the planning period and are sufficient to provide for the
26 jurisdiction's share of the regional housing need for all income
27 levels pursuant to Section 65584, then this paragraph shall not be
28 utilized to disapprove or conditionally approve a housing
29 development project proposed for a site designated in any element
30 of the general plan for residential uses or designated in any element
31 of the general plan for commercial uses if residential uses are
32 permitted or conditionally permitted within commercial
33 designations. In any action in court, the burden of proof shall be
34 on the local agency to show that its housing element does identify
35 adequate sites with appropriate zoning and development standards
36 and with services and facilities to accommodate the local agency's
37 share of the regional housing need for the very low, low-, and
38 moderate-income categories.

39 (C) If the local agency has failed to identify a zone or zones
40 where emergency shelters are allowed as a permitted use without

1 a conditional use or other discretionary permit, has failed to
 2 demonstrate that the identified zone or zones include sufficient
 3 capacity to accommodate the need for emergency shelter identified
 4 in paragraph (7) of subdivision (a) of Section 65583, or has failed
 5 to demonstrate that the identified zone or zones can accommodate
 6 at least one emergency shelter, as required by paragraph (4) of
 7 subdivision (a) of Section 65583, then this paragraph shall not be
 8 utilized to disapprove or conditionally approve an emergency
 9 shelter proposed for a site designated in any element of the general
 10 plan for industrial, commercial, or multifamily residential uses. In
 11 any action in court, the burden of proof shall be on the local agency
 12 to show that its housing element does satisfy the requirements of
 13 paragraph (4) of subdivision (a) of Section 65583.

14 (e) Nothing in this section shall be construed to relieve the local
 15 agency from complying with the congestion management program
 16 required by Chapter 2.6 (commencing with Section 65088) of
 17 Division 1 of Title 7 or the California Coastal Act of 1976
 18 (Division 20 (commencing with Section 30000) of the Public
 19 Resources Code). ~~Neither shall anything in this section~~ *This section*
 20 *shall not* be construed to relieve the local agency from making one
 21 or more of the findings required pursuant to Section 21081 of the
 22 Public Resources Code or otherwise complying with the California
 23 Environmental Quality Act (Division 13 (commencing with Section
 24 21000) of the Public Resources Code).

25 (f) (1) Except as provided in subdivision (o), nothing in shall
 26 be construed to prohibit a local agency from requiring the housing
 27 development project to comply with objective, quantifiable, written
 28 development standards, conditions, and policies appropriate to,
 29 and consistent with, meeting the jurisdiction's share of the regional
 30 housing need pursuant to Section 65584. However, the
 31 development standards, conditions, and policies shall be applied
 32 to facilitate and accommodate development at the density permitted
 33 on the site and proposed by the development.

34 (2) Except as provided in subdivision (o), nothing in shall be
 35 construed to prohibit a local agency from requiring an emergency
 36 shelter project to comply with objective, quantifiable, written
 37 development standards, conditions, and policies that are consistent
 38 with paragraph (4) of subdivision (a) of Section 65583 and
 39 appropriate to, and consistent with, meeting the jurisdiction's need
 40 for emergency shelter, as identified pursuant to paragraph (7) of

1 subdivision (a) of Section 65583. However, the development
2 standards, conditions, and policies shall be applied by the local
3 agency to facilitate and accommodate the development of the
4 emergency shelter project.

5 (3) Except as provided in subdivision (o), nothing in this section
6 shall be construed to prohibit a local agency from imposing fees
7 and other exactions otherwise authorized by law that are essential
8 to provide necessary public services and facilities to the housing
9 development project or emergency shelter.

10 (4) For purposes of this section, a housing development project
11 or emergency shelter shall be deemed consistent, compliant, and
12 in conformity with an applicable plan, program, policy, ordinance,
13 standard, requirement, or other similar provision if there is
14 substantial evidence that would allow a reasonable person to
15 conclude that the housing development project or emergency
16 shelter is consistent, compliant, or in conformity.

17 (g) This section shall be applicable to charter cities because the
18 Legislature finds that the lack of housing, including emergency
19 shelter, is a critical statewide problem.

20 (h) The following definitions apply for the purposes of this
21 section:

22 (1) “Feasible” means capable of being accomplished in a
23 successful manner within a reasonable period of time, taking into
24 account economic, environmental, social, and technological factors.

25 (2) “Housing development project” means a use consisting of
26 any of the following:

27 (A) Residential units only.

28 (B) Mixed-use developments consisting of residential and
29 nonresidential uses with at least two-thirds of the square footage
30 designated for residential use.

31 (C) Transitional housing or supportive housing.

32 (3) “Housing for very low, low-, or moderate-income
33 households” means that either (A) at least 20 percent of the total
34 units shall be sold or rented to lower income households, as defined
35 in Section 50079.5 of the Health and Safety Code, or (B) 100
36 percent of the units shall be sold or rented to persons and families
37 of moderate income as defined in Section 50093 of the Health and
38 Safety Code, or persons and families of middle income, as defined
39 in Section 65008 of this code. Housing units targeted for lower
40 income households shall be made available at a monthly housing

1 cost that does not exceed 30 percent of 60 percent of area median
2 income with adjustments for household size made in accordance
3 with the adjustment factors on which the lower income eligibility
4 limits are based. Housing units targeted for persons and families
5 of moderate income shall be made available at a monthly housing
6 cost that does not exceed 30 percent of 100 percent of area median
7 income with adjustments for household size made in accordance
8 with the adjustment factors on which the moderate-income
9 eligibility limits are based.

10 (4) “Area median income” means area median income as
11 periodically established by the Department of Housing and
12 Community Development pursuant to Section 50093 of the Health
13 and Safety Code. The developer shall provide sufficient legal
14 commitments to ensure continued availability of units for very low
15 or low-income households in accordance with the provisions of
16 this subdivision for 30 years.

17 (5) Notwithstanding any other law, until January 1, 2025,
18 “deemed complete” means that the applicant has submitted a
19 preliminary application pursuant to Section 65941.1.

20 (6) “Disapprove the housing development project” includes any
21 instance in which a local agency does either of the following:

22 (A) Votes on a proposed housing development project
23 application and the application is disapproved, including any
24 required land use approvals or entitlements necessary for the
25 issuance of a building permit.

26 (B) Fails to comply with the time periods specified in
27 subdivision (a) of Section 65950. An extension of time pursuant
28 to Article 5 (commencing with Section 65950) shall be deemed to
29 be an extension of time pursuant to this paragraph.

30 (7) “Lower density” includes any conditions that have the same
31 effect or impact on the ability of the project to provide housing.

32 (8) Until January 1, 2025, “objective” means involving no
33 personal or subjective judgment by a public official and being
34 uniformly verifiable by reference to an external and uniform
35 benchmark or criterion available and knowable by both the
36 development applicant or proponent and the public official.

37 (9) Notwithstanding any other law, until January 1, 2025,
38 “determined to be complete” means that the applicant has submitted
39 a complete application pursuant to Section 65943.

1 (i) If any city, county, or city and county denies approval or
2 imposes conditions, including design changes, lower density, or
3 a reduction of the percentage of a lot that may be occupied by a
4 building or structure under the applicable planning and zoning in
5 force at the time housing development project's the application is
6 complete, that have a substantial adverse effect on the viability or
7 affordability of a housing development for very low, low-, or
8 moderate-income households, and the denial of the development
9 or the imposition of conditions on the development is the subject
10 of a court action which challenges the denial or the imposition of
11 conditions, then the burden of proof shall be on the local legislative
12 body to show that its decision is consistent with the findings as
13 described in subdivision (d), and that the findings are supported
14 by a preponderance of the evidence in the record, and with the
15 requirements of subdivision (o).

16 (j) (1) When a proposed housing development project complies
17 with applicable, objective general plan, zoning, and subdivision
18 standards and criteria, including design review standards, in effect
19 at the time that the application was deemed complete, but the local
20 agency proposes to disapprove the project or to impose a condition
21 that the project be developed at a lower density, the local agency
22 shall base its decision regarding the proposed housing development
23 project upon written findings supported by a preponderance of the
24 evidence on the record that both of the following conditions exist:

25 (A) The housing development project would have a specific,
26 adverse impact upon the public health or safety unless the project
27 is disapproved or approved upon the condition that the project be
28 developed at a lower density. As used in this paragraph, a "specific,
29 adverse impact" means a significant, quantifiable, direct, and
30 unavoidable impact, based on objective, identified written public
31 health or safety standards, policies, or conditions as they existed
32 on the date the application was deemed complete.

33 (B) There is no feasible method to satisfactorily mitigate or
34 avoid the adverse impact identified pursuant to paragraph (1), other
35 than the disapproval of the housing development project or the
36 approval of the project upon the condition that it be developed at
37 a lower density.

38 (2) (A) If the local agency considers a proposed housing
39 development project to be inconsistent, not in compliance, or not
40 in conformity with an applicable plan, program, policy, ordinance,

1 standard, requirement, or other similar provision as specified in
 2 this subdivision, it shall provide the applicant with written
 3 documentation identifying the provision or provisions, and an
 4 explanation of the reason or reasons it considers the housing
 5 development to be inconsistent, not in compliance, or not in
 6 conformity as follows:

7 (i) Within 30 days of the date that the application for the housing
 8 development project is determined to be complete, if the housing
 9 development project contains 150 or fewer housing units.

10 (ii) Within 60 days of the date that the application for the
 11 housing development project is determined to be complete, if the
 12 housing development project contains more than 150 units.

13 (B) If the local agency fails to provide the required
 14 documentation pursuant to subparagraph (A), the housing
 15 development project shall be deemed consistent, compliant, and
 16 in conformity with the applicable plan, program, policy, ordinance,
 17 standard, requirement, or other similar provision.

18 (3) For purposes of this section, the receipt of a density bonus
 19 pursuant to Section 65915 *or an equitable communities incentive*
 20 *pursuant to Section 65918.51* shall not constitute a valid basis on
 21 which to find a proposed housing development project is
 22 inconsistent, not in compliance, or not in ~~conformity~~, *conformity*
 23 with an applicable plan, program, policy, ordinance, standard,
 24 requirement, or other similar provision specified in this subdivision.

25 (4) For purposes of this section, a proposed housing development
 26 project is not inconsistent with the applicable zoning standards
 27 and criteria, and shall not require a rezoning, if the housing
 28 development project is consistent with the objective general plan
 29 standards and criteria but the zoning for the project site is
 30 inconsistent with the general plan. If the local agency has complied
 31 with paragraph (2), the local agency may require the proposed
 32 housing development project to comply with the objective
 33 standards and criteria of the zoning which is consistent with the
 34 general plan, however, the standards and criteria shall be applied
 35 to facilitate and accommodate development at the density allowed
 36 on the site by the general plan and proposed by the proposed
 37 housing development project.

38 (k) (1) (A) (i) The applicant, a person who would be eligible
 39 to apply for residency in the housing development project or
 40 emergency shelter, or a housing organization may bring an action

1 to enforce this section. If, in any action brought to enforce this
2 section, a court finds that any of the following are met, the court
3 shall issue an order pursuant to clause (ii):

4 (I) The local agency, in violation of subdivision (d), disapproved
5 a housing development project or conditioned its approval in a
6 manner rendering it infeasible for the development of an emergency
7 shelter, or housing for very low, low-, or moderate-income
8 households, including farmworker housing, without making the
9 findings required by this section or without making findings
10 supported by a preponderance of the evidence.

11 (II) The local agency, in violation of subdivision (j), disapproved
12 a housing development project complying with applicable,
13 objective general plan and zoning standards and criteria, or imposed
14 a condition that the project be developed at a lower density, without
15 making the findings required by this section or without making
16 findings supported by a preponderance of the evidence.

17 (III) (ia) Subject to sub-subclause (ib), the local agency, in
18 violation of subdivision (o), required or attempted to require a
19 housing development project to comply with an ordinance, policy,
20 or standard not adopted and in effect when a preliminary
21 application was submitted.

22 (ib) This subclause shall become inoperative on January 1, 2025.

23 (ii) If the court finds that one of the conditions in clause(i) is
24 met, the court shall issue an order or judgment compelling
25 compliance with this section within 60 days, including, but not
26 limited to, an order that the local agency take action on the housing
27 development project or emergency shelter. The court may issue
28 an order or judgment directing the local agency to approve the
29 housing development project or emergency shelter if the court
30 finds that the local agency acted in bad faith when it disapproved
31 or conditionally approved the housing development or emergency
32 shelter in violation of this section. The court shall retain jurisdiction
33 to ensure that its order or judgment is carried out and shall award
34 reasonable attorney's fees and costs of suit to the plaintiff or
35 petitioner, except under extraordinary circumstances in which the
36 court finds that awarding fees would not further the purposes of
37 this section.

38 (B) (i) Upon a determination that the local agency has failed
39 to comply with the order or judgment compelling compliance with
40 this section within 60 days issued pursuant to subparagraph (A),

1 the court shall impose fines on a local agency that has violated this
2 section and require the local agency to deposit any fine levied
3 pursuant to this subdivision into a local housing trust fund. The
4 local agency may elect to instead deposit the fine into the Building
5 Homes and Jobs *Trust* Fund, if Senate Bill 2 of the 2017–18
6 Regular Session is enacted, or otherwise in the Housing
7 Rehabilitation Loan Fund. The fine shall be in a minimum amount
8 of ten thousand dollars (\$10,000) per housing unit in the housing
9 development project on the date the application was deemed
10 complete pursuant to Section 65943. In determining the amount
11 of fine to impose, the court shall consider the local agency's
12 progress in attaining its target allocation of the regional housing
13 need pursuant to Section 65584 and any prior violations of this
14 section. Fines shall not be paid out of funds already dedicated to
15 affordable housing, including, but not limited to, Low and
16 Moderate Income Housing Asset Funds, funds dedicated to housing
17 for very low, low-, and moderate-income households, and federal
18 HOME Investment Partnerships Program and Community
19 Development Block Grant Program funds. The local agency shall
20 commit and expend the money in the local housing trust fund
21 within five years for the sole purpose of financing newly
22 constructed housing units affordable to extremely low, very low,
23 or low-income households. After five years, if the funds have not
24 been expended, the money shall revert to the state and be deposited
25 in the Building Homes and Jobs *Trust* Fund, if Senate Bill 2 of the
26 2017–18 Regular Session is enacted, or otherwise in the Housing
27 Rehabilitation Loan Fund, for the sole purpose of financing newly
28 constructed housing units affordable to extremely low, very low,
29 or low-income households.

30 (ii) If any money derived from a fine imposed pursuant to this
31 subparagraph is deposited in the Housing Rehabilitation Loan
32 Fund, then, notwithstanding Section 50661 of the Health and Safety
33 Code, that money shall be available only upon appropriation by
34 the Legislature.

35 (C) If the court determines that its order or judgment has not
36 been carried out within 60 days, the court may issue further orders
37 as provided by law to ensure that the purposes and policies of this
38 section are fulfilled, including, but not limited to, an order to vacate
39 the decision of the local agency and to approve the housing
40 development project, in which case the application for the housing

1 development project, as proposed by the applicant at the time the
2 local agency took the initial action determined to be in violation
3 of this section, along with any standard conditions determined by
4 the court to be generally imposed by the local agency on similar
5 projects, shall be deemed to be approved unless the applicant
6 consents to a different decision or action by the local agency.

7 (2) For purposes of this subdivision, “housing organization”
8 means a trade or industry group whose local members are primarily
9 engaged in the construction or management of housing units or a
10 nonprofit organization whose mission includes providing or
11 advocating for increased access to housing for low-income
12 households and have filed written or oral comments with the local
13 agency prior to action on the housing development project. A
14 housing organization may only file an action pursuant to this
15 section to challenge the disapproval of a housing development by
16 a local agency. A housing organization shall be entitled to
17 reasonable attorney’s fees and costs if it is the prevailing party in
18 an action to enforce this section.

19 (l) If the court finds that the local agency (1) acted in bad faith
20 when it disapproved or conditionally approved the housing
21 development or emergency shelter in violation of this section and
22 (2) failed to carry out the court’s order or judgment within 60 days
23 as described in subdivision (k), the court, in addition to any other
24 remedies provided by this section, shall multiply the fine
25 determined pursuant to subparagraph (B) of paragraph (1) of
26 subdivision (k) by a factor of five. For purposes of this section,
27 “bad faith” includes, but is not limited to, an action that is frivolous
28 or otherwise entirely without merit.

29 (m) Any action brought to enforce the provisions of this section
30 shall be brought pursuant to Section 1094.5 of the Code of Civil
31 Procedure, and the local agency shall prepare and certify the record
32 of proceedings in accordance with subdivision (c) of Section 1094.6
33 of the Code of Civil Procedure no later than 30 days after the
34 petition is served, provided that the cost of preparation of the record
35 shall be borne by the local agency, unless the petitioner elects to
36 prepare the record as provided in subdivision (n) of this section.
37 A petition to enforce the provisions of this section shall be filed
38 and served no later than 90 days from the later of (1) the effective
39 date of a decision of the local agency imposing conditions on,
40 disapproving, or any other final action on a housing development

1 project or (2) the expiration of the time periods specified in
2 subparagraph (B) of paragraph (5) of subdivision (h). Upon entry
3 of the trial court's order, a party may, in order to obtain appellate
4 review of the order, file a petition within 20 days after service
5 upon it of a written notice of the entry of the order, or within such
6 further time not exceeding an additional 20 days as the trial court
7 may for good cause allow, or may appeal the judgment or order
8 of the trial court under Section 904.1 of the Code of Civil
9 Procedure. If the local agency appeals the judgment of the trial
10 court, the local agency shall post a bond, in an amount to be
11 determined by the court, to the benefit of the plaintiff if the plaintiff
12 is the project applicant.

13 (n) In any action, the record of the proceedings before the local
14 agency shall be filed as expeditiously as possible and,
15 notwithstanding Section 1094.6 of the Code of Civil Procedure or
16 subdivision (m) of this section, all or part of the record may be
17 prepared (1) by the petitioner with the petition or petitioner's points
18 and authorities, (2) by the respondent with respondent's points and
19 authorities, (3) after payment of costs by the petitioner, or (4) as
20 otherwise directed by the court. If the expense of preparing the
21 record has been borne by the petitioner and the petitioner is the
22 prevailing party, the expense shall be taxable as costs.

23 (o) (1) Subject to paragraphs (2), (6), and (7), and subdivision
24 (d) of Section 65941.1, a housing development project shall be
25 subject only to the ordinances, policies, and standards adopted and
26 in effect when a preliminary application including all of the
27 information required by subdivision (a) of Section 65941.1 was
28 submitted.

29 (2) Paragraph (1) shall not prohibit a housing development
30 project from being subject to ordinances, policies, and standards
31 adopted after the preliminary application was submitted pursuant
32 to Section 65941.1 in the following circumstances:

33 (A) In the case of a fee, charge, or other monetary exaction, to
34 an increase resulting from an automatic annual adjustment based
35 on an independently published cost index that is referenced in the
36 ordinance or resolution establishing the fee or other monetary
37 exaction.

38 (B) A preponderance of the evidence in the record establishes
39 that subjecting the housing development project to an ordinance,
40 policy, or standard beyond those in effect when a preliminary

1 application was submitted is necessary to mitigate or avoid a
2 specific, adverse impact upon the public health or safety, as defined
3 in subparagraph (A) of paragraph (1) of subdivision (j), and there
4 is no feasible alternative method to satisfactorily mitigate or avoid
5 the adverse impact.

6 (C) Subjecting the housing development project to an ordinance,
7 policy, standard, or any other measure, beyond those in effect when
8 a preliminary application was submitted is necessary to avoid or
9 substantially lessen an impact of the project under the California
10 Environmental Quality Act (Division 13 (commencing with Section
11 21000) of the Public Resources Code).

12 (D) The housing development project has not commenced
13 construction within two and one-half years following the date that
14 the project received final approval. For purposes of this
15 subparagraph, “final approval” means that the housing development
16 project has received all necessary approvals to be eligible to apply
17 for, and obtain, a building permit or permits and either of the
18 following is met:

19 (i) The expiration of all applicable appeal periods, petition
20 periods, reconsideration periods, or statute of limitations for
21 challenging that final approval without an appeal, petition, request
22 for reconsideration, or legal challenge having been filed.

23 (ii) If a challenge is filed, that challenge is fully resolved or
24 settled in favor of the housing development project.

25 (E) The housing development project is revised following
26 submittal of a preliminary application pursuant to Section 65941.1
27 such that the number of residential units or square footage of
28 construction changes by 20 percent or more, exclusive of any
29 increase resulting from the receipt of a density bonus, incentive,
30 concession, waiver, or similar provision. For purposes of this
31 subdivision, “square footage of construction” means the building
32 area, as defined by the California Building Standards Code (Title
33 24 of the California Code of Regulations).

34 (3) This subdivision does not prevent a local agency from
35 subjecting the additional units or square footage of construction
36 that result from project revisions occurring after a preliminary
37 application is submitted pursuant to Section 65941.1 to the
38 ordinances, policies, and standards adopted and in effect when the
39 preliminary application was submitted.

(4) For purposes of this subdivision, “ordinances, policies, and standards” includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.

(5) This subdivision shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section.

(6) This subdivision shall not restrict the authority of a public agency or local agency to require mitigation measures to lessen the impacts of a housing development project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) With respect to completed residential units for which the project approval process is complete and a certificate of occupancy has been issued, nothing in this subdivision shall limit the application of later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing.

(8) This subdivision shall become inoperative on January 1, 2025.

(p) This section shall be known, and may be cited, as the Housing Accountability Act.

SEC. 2. Section 65913.5 is added to the Government Code, to read:

65913.5. For purposes of this section and Section 65913.6, the following definitions shall apply:

(a) “Development proponent” means the developer who submits an application for streamlined approval pursuant to Section 65913.6.

(b) “Eligible parcel” means a parcel that meets all of the following requirements:

(1) *The parcel is not located on a site that is on a coastal zone, as defined in Division 20 (commencing with Section 30000) of the*

1 *Public Resources Code, unless the local agency has a population*
 2 *of 50,000 or more, based on the most recent United States Census*
 3 *Bureau data.*

4 (1)

5 (2) The parcel satisfies the requirements specified in paragraph
 6 (2) of subdivision (a) of Section 65913.4.

7 (3) *The parcel satisfies the requirements specified in*
 8 *subparagraphs (B) to (K), inclusive, of paragraph (6) of*
 9 *subdivision (a) of Section 65913.4.*

10 (2) ~~The parcel is not located on a site that is any of the following:~~

11 (A) ~~A coastal zone, as defined in Division 20 (commencing~~
 12 ~~with Section 30000) of the Public Resources Code, unless the local~~
 13 ~~agency has a population of 50,000 or more, based on the most~~
 14 ~~recent United States Census Bureau data.~~

15 (B) ~~Either prime farmland or farmland of statewide importance,~~
 16 ~~as defined pursuant to United States Department of Agriculture~~
 17 ~~land inventory and monitoring criteria, as modified for California,~~
 18 ~~and designated on the maps prepared by the Farmland Mapping~~
 19 ~~and Monitoring Program of the Department of Conservation, or~~
 20 ~~land zoned or designated for agricultural protection or preservation~~
 21 ~~by a local ballot measure that was approved by the voters of that~~
 22 ~~jurisdiction.~~

23 (C) ~~Wetlands, as defined in the United States Fish and Wildlife~~
 24 ~~Service Manual, Part 660 FW 2 (June 21, 1993).~~

25 (D) ~~Within a very high fire hazard severity zone, as determined~~
 26 ~~by the Department of Forestry and Fire Protection pursuant to~~
 27 ~~Section 51178, or within a high or very high fire hazard severity~~
 28 ~~zone as indicated on maps adopted by the Department of Forestry~~
 29 ~~and Fire Protection pursuant to Section 4202 of the Public~~
 30 ~~Resources Code. A parcel is not ineligible within the meaning of~~
 31 ~~this subparagraph if it is either:~~

32 ~~(i) A site excluded from the specified hazard zones by a local~~
 33 ~~agency, pursuant to subdivision (b) of Section 51179.~~

34 ~~(ii) A site that has adopted fire hazard mitigation measures~~
 35 ~~pursuant to existing building standards or state fire mitigation~~
 36 ~~measures applicable to the development.~~

37 (E) ~~A hazardous waste site that is listed pursuant to Section~~
 38 ~~65962.5 or a hazardous waste site designated by the Department~~
 39 ~~of Toxic Substances Control pursuant to Section 25356 of the~~
 40 ~~Health and Safety Code, unless the Department of Toxic~~

1 ~~Substances Control has cleared the site for residential use or~~
 2 ~~residential mixed uses.~~

3 ~~(F) Within a delineated earthquake fault zone as determined by~~
 4 ~~the State Geologist in any official maps published by the State~~
 5 ~~Geologist, unless the development complies with applicable seismic~~
 6 ~~protection building code standards adopted by the California~~
 7 ~~Building Standards Commission under the California Building~~
 8 ~~Standards Law (Part 2.5 (commencing with Section 18901) of~~
 9 ~~Division 13 of the Health and Safety Code), and by any local~~
 10 ~~building department under Chapter 12.2 (commencing with Section~~
 11 ~~8875) of Division 1 of Title 2.~~

12 ~~(G) Within a special flood hazard area subject to inundation by~~
 13 ~~the 1-percent annual chance flood (100-year flood) as determined~~
 14 ~~by the Federal Emergency Management Agency in any official~~
 15 ~~maps published by the Federal Emergency Management Agency.~~
 16 ~~If a development proponent is able to satisfy all applicable federal~~
 17 ~~qualifying criteria in order to provide that the site satisfies this~~
 18 ~~subparagraph and is otherwise eligible for streamlined approval~~
 19 ~~under this section, a local government shall not deny the application~~
 20 ~~on the basis that the development proponent did not comply with~~
 21 ~~any additional permit requirement, standard, or action adopted by~~
 22 ~~that local government that is applicable to that site. A development~~
 23 ~~may be located on a site described in this subparagraph if either~~
 24 ~~of the following are met:~~

25 ~~(i) The site has been subject to a Letter of Map Revision~~
 26 ~~prepared by the Federal Emergency Management Agency and~~
 27 ~~issued to the local jurisdiction.~~

28 ~~(ii) The site meets Federal Emergency Management Agency~~
 29 ~~requirements necessary to meet minimum flood plain management~~
 30 ~~criteria of the National Flood Insurance Program pursuant to Part~~
 31 ~~59 (commencing with Section 59.1) and Part 60 (commencing~~
 32 ~~with Section 60.1) of Subchapter B of Chapter I of Title 44 of the~~
 33 ~~Code of Federal Regulations.~~

34 ~~(H) Within a regulatory floodway as determined by the Federal~~
 35 ~~Emergency Management Agency in any official maps published~~
 36 ~~by the Federal Emergency Management Agency, unless the~~
 37 ~~development has received a no-rise certification in accordance~~
 38 ~~with Section 60.3(d)(3) of Title 44 of the Code of Federal~~
 39 ~~Regulations. If a development proponent is able to satisfy all~~
 40 ~~applicable federal qualifying criteria in order to provide that the~~

1 site satisfies this subparagraph and is otherwise eligible for
 2 streamlined approval under this section, a local government shall
 3 not deny the application on the basis that the development
 4 proponent did not comply with any additional permit requirement,
 5 standard, or action adopted by that local government that is
 6 applicable to that site.

7 (I) Lands identified for conservation in any of the following:

8 (i) An adopted natural community conservation plan pursuant
 9 to the Natural Community Conservation Planning Act (Chapter
 10 10 (commencing with Section 2800) of Division 3 of the Fish and
 11 Game Code).

12 (ii) A habitat conservation plan pursuant to the federal
 13 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

14 (iii) Any other adopted natural resource protection plan.

15 (J) Habitat for protected species identified as candidate,
 16 sensitive, or species of special status by state or federal agencies,
 17 fully protected species, or species protected by any of the
 18 following:

19 (i) The federal Endangered Species Act of 1973 (16 U.S.C. Sec.
 20 1531 et seq.).

21 (ii) The California Endangered Species Act (Chapter 1.5
 22 (commencing with Section 2050) of Division 3 of the Fish and
 23 Game Code).

24 (iii) The Native Plant Protection Act (Chapter 10 (commencing
 25 with Section 1900) of Division 2 of the Fish and Game Code).

26 (K) Lands under conservation easement.

27 (3)

28 (4) The development of the project on the proposed parcel would
 29 not require the demolition or alteration of any of the following
 30 types of housing:

31 (A) Housing that is subject to a recorded covenant, ordinance,
 32 or law that restricts rents to levels affordable to persons and
 33 families of moderate, low, or very low income.

34 (B) Housing that is subject to any form of rent or price control
 35 through a public entity's valid exercise of its police power.

36 (C) Housing occupied by tenants, as that term is defined in
 37 subdivision (l) of Section 65918.50, within the seven years
 38 preceding the date of the application, including housing that has
 39 been demolished or that tenants have vacated before the application
 40 for a development permit.

(D) A parcel or parcels on which an owner of residential real property has exercised their rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application pursuant to Section 65913.6.

~~(4)~~

(5) The development of the project on the proposed parcel would not require the demolition of a historic structure that was placed on a national, state, or local historic register.

(c) “Local agency” means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(d) “Neighborhood multifamily project” means a project to construct a multifamily structure of up to four residential dwelling units that meets all of the following requirements:

(1) The project meets one of the following conditions:

(A) The parcel or parcels on which the neighborhood multifamily project would be located is vacant land, as defined in subdivision (e).

(B) If the project is a conversion of an existing structure, the conversion shall not require substantial exterior alteration. For the purposes of this subparagraph, a project requires “substantial exterior alteration” if the project would require either of the following:

(i) The demolition of 25 percent or more of the existing exterior vertical walls, measured by linear feet.

(ii) Any building addition that would increase total interior square footage by more than 15 percent.

(2) (A) The neighborhood multifamily project shall meet all objective zoning standards and objective design review standards that do not conflict with this section or Section 65913.6. If, on or after July 1, 2019, a local agency adopts an ordinance that eliminates zoning designations permissive to residential use or decreases residential zoning development capacity within an existing zoning district in which the development is located than what was authorized on July 1, 2019, then that development shall be deemed to be consistent with any applicable requirement of this section and Section 65913.6 if it complies with zoning designations

1 not in conflict with this section and Section 65913.6 that were
2 authorized as of July 1, 2019.

3 (B) For purposes of this paragraph, “objective zoning standards”
4 and “objective design review standards” means standards that
5 involve no personal or subjective judgment by a public official
6 and are uniformly verifiable by reference to an external and
7 uniform benchmark or criterion available and knowable by both
8 the development proponent and the public official before the
9 development proponent submits an application pursuant to this
10 section. These standards include, but are not limited to, height,
11 setbacks, floor area ratio, and lot coverage. For purposes of this
12 section and Section 65913.6, “objective zoning standard” does not
13 include any limits related to residential density that would limit a
14 development to fewer than four residential units per parcel.

15 (3) A local agency may require the neighborhood multifamily
16 project to provide at least 0.5 parking spaces per unit.

17 (e) “Vacant land” means either of the following:

18 (1) A property that contains no existing structures.

19 (2) A property that contains at least one existing structure, but
20 the structure or structures have been unoccupied for at least five
21 years and are considered substandard as defined by Section 17920.3
22 of the Health and Safety Code.

23 SEC. 3. Section 65913.6 is added to the Government Code, to
24 read:

25 65913.6. (a) For purposes of this section, the definitions
26 provided in Section 65913.5 shall apply.

27 (b) Except as provided in subdivision (g), a development
28 proponent of a neighborhood multifamily project on an eligible
29 parcel may submit an application for a development to be subject
30 to a streamlined, ministerial approval process provided by this
31 section and not be subject to a conditional use permit if the
32 development meets the requirements of this section and Section
33 65913.5.

34 (c) (1) If a local agency determines that a development
35 submitted pursuant to this section is in conflict with any of the
36 requirements specified in this section or Section 65913.5, it shall
37 provide the development proponent written documentation of
38 which requirement or requirements the development conflicts with,
39 and an explanation for the reason or reasons the development
40 conflicts with that requirement or requirements, within 60 days of

1 submission of the development to the local agency pursuant to this
2 section.

3 (2) If the local agency fails to provide the required
4 documentation pursuant to paragraph (1), the development shall
5 be deemed to satisfy the requirements of this section and Section
6 65913.5.

7 (d) Any design review or public oversight of the development
8 may be conducted by the local agency's planning commission or
9 any equivalent board or commission responsible for review and
10 approval of development projects, or the city council or board of
11 supervisors, as appropriate. That design review or public oversight
12 shall be objective and be strictly focused on assessing compliance
13 with criteria required for streamlined projects, as well as any
14 reasonable objective design standards published and adopted by
15 ordinance or resolution by a local agency before submission of a
16 development application, and shall be broadly applicable to
17 development within the local agency. That design review or public
18 oversight shall be completed within 90 days of submission of the
19 development to the local agency pursuant to this section and shall
20 not in any way inhibit, chill, or preclude the ministerial approval
21 provided by this section or its effect, as applicable.

22 (e) Notwithstanding any other law, a local agency, whether or
23 not it has adopted an ordinance governing automobile parking
24 requirements in multifamily developments, shall not impose
25 automobile parking standards for a streamlined development that
26 was approved pursuant to this section, including those related to
27 orientation or structure of off-street automobile parking, beyond
28 those provided in the minimum requirements of Section 65913.5.

29 (f) (1) If a local agency approves a development pursuant to
30 this section, that approval shall automatically expire after three
31 years except that a project may receive a one-time, one-year
32 extension if the project proponent provides documentation that
33 there has been significant progress toward getting the development
34 construction ready. For purposes of this paragraph, "significant
35 progress" includes filing a building permit application.

36 (2) If a local agency approves a development pursuant to this
37 section, that approval shall remain valid for three years from the
38 date of the final action establishing that approval and shall remain
39 valid thereafter for a project so long as vertical construction of the
40 development has begun and is in progress. Additionally, the

1 development proponent may request, and the local agency shall
 2 have discretion to grant, an additional one-year extension to the
 3 original three-year period. The local agency's action and discretion
 4 in determining whether to grant the foregoing extension shall be
 5 limited to considerations and process set forth in this section.

6 (g) This section shall not apply if the local agency finds that the
 7 development project as proposed would have a specific, adverse
 8 impact upon the public health or safety, including, but not limited
 9 to, fire safety, and there is no feasible method to satisfactorily
 10 mitigate or avoid the specific adverse impact without rendering
 11 the development unaffordable to low- and moderate-income
 12 households. As used in this paragraph, a "specific, adverse impact"
 13 means a significant, quantifiable, direct, and unavoidable impact,
 14 based on objective, identified written public health or safety
 15 standards, policies, or conditions as they existed on the date the
 16 application was deemed complete. Inconsistency with the zoning
 17 ordinance or general plan land use designation shall not constitute
 18 a specific, adverse impact upon the public health or safety.

19 (h) A local agency shall not adopt any requirement, including,
 20 but not limited to, increased fees or inclusionary housing
 21 requirements, that applies to a project solely or partially on the
 22 basis that the project is eligible to receive ministerial or streamlined
 23 approval pursuant to this section.

24 (i) This section shall not affect a development proponent's
 25 ability to use any alternative streamlined by right permit processing
 26 adopted by a local agency, including the provisions of subdivision
 27 (i) of Section 65583.2 or 65913.4.

28 SEC. 4. Chapter 4.35 (commencing with Section 65918.50) is
 29 added to Division 1 of Title 7 of the Government Code, to read:

30
 31 CHAPTER 4.35. EQUITABLE COMMUNITIES INCENTIVES

32
 33 65918.50. For purposes of this chapter:

34 (a) "Development proponent" means an applicant who submits
 35 an application for an equitable communities incentive pursuant to
 36 this chapter.

37 (b) "Eligible applicant" means a development proponent ~~who~~
 38 ~~receives whose development project meets the requirements of this~~
 39 ~~chapter to receive an equitable communities incentive.~~

40 (c) "FAR" means floor area ratio.

(d) “High-quality bus corridor” means a corridor with fixed route bus service that meets all of the following criteria:

(1) It has average service intervals for each line and in each direction of no more than 10 minutes during the three peak hours between 6 a.m. to 10 a.m., inclusive, and the three peak hours between 3 p.m. to 7 p.m., inclusive, on Monday through Friday.

(2) It has average service intervals for each line and in each direction of no more than 20 minutes during the hours of 6 a.m. to 10 p.m., inclusive, on Monday through Friday.

(3) It has average service intervals for each line and in each direction of no more than 30 minutes during the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.

(4) It has met the criteria specified in paragraphs (1) to (3), inclusive, for the five years preceding the date that a development proponent submits an application for approval of a residential development.

(e) (1) “Jobs-rich area” means an area identified by the Department of Housing and Community Development in consultation with the Office of Planning and Research that is high opportunity and either is jobs rich or would enable shorter commute distances based on whether, in a regional analysis, the tract meets both of the following:

(A) The tract is high opportunity, meaning its characteristics are associated with positive educational and economic outcomes for households of all income levels residing in the tract.

(B) The tract meets either of the following criteria:

(i) New housing sited in the tract would enable residents to live near more jobs than is typical for tracts in the region.

(ii) New housing sited in the tract would enable shorter commute distances for residents, relative to existing commute patterns and jobs-housing fit.

(2) The Department of Housing and Community Development shall, commencing on January 1, ~~2020~~, 2021, publish and update, every five years thereafter, a map of the state showing the areas identified by the department as “jobs-rich areas.”

(f) “Job-rich housing project” means a residential development within a jobs-rich area. A residential development shall be deemed to be within a jobs-rich area if both of the following apply:

(1) All parcels within the project have no more than 25 percent of their area outside of the jobs-rich area.

(2) No more than 10 percent of residential units or 100 units, whichever is less, of the development are outside of the jobs-rich area.

(g) “Local government” means a city, including a charter city, a county, or a city and county.

(h) “Major transit stop” means a rail transit station or a ferry terminal that is a major transit stop pursuant to subdivision (b) of Section 21155 of the Public Resources Code.

(i) “Potentially sensitive community” means any of the following:

(1) An area that is designated as “high segregation and poverty” or “low resource” on the 2019 Opportunity Maps developed by the California Tax Credit Allocation Committee.

(2) A census tract that is in the top 25 percent scoring census tracts from the internet-based CalEnviroScreen 3.0 tool.

(3) A qualified census tract identified by the United States Department of Housing and Urban Development for 2019.

(4) It is the intent of the Legislature to consider ~~all~~ both of the following:

(A) Identifying additional communities as potentially sensitive communities in inland areas, areas experiencing rapid change in housing cost, and other areas based on objective measures of community sensitivity.

(B) Application of the process for determining sensitive communities established in subdivision (d) of Section 65918.55 to the San Francisco Bay area.

(j) “Residential development” means a project with at least two-thirds of the square footage of the development designated for residential use.

(k) “Sensitive community” means either of the following:

(1) Except as provided in paragraph (2), an area identified pursuant to subdivision ~~(d)~~ (b) of Section ~~65918.55~~ 65918.58.

(2) In the Counties of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma, areas designated by the Metropolitan Transportation Commission on December 19, 2018, as the intersection of disadvantaged and vulnerable communities as defined by the Metropolitan Transportation Commission and the San Francisco Bay Conservation and Development Commission, which identification

1 of a sensitive community shall be updated at least every five years
 2 by the Department of Housing and Community Development.

3 (l) “Tenant” means a person who does not own the property
 4 where they reside, including residential situations that are any of
 5 the following:

6 (1) Residential real property rented by the person under a
 7 long-term lease.

8 (2) A single-room occupancy unit.

9 (3) An accessory dwelling unit that is not subject to, or does
 10 not have a valid permit in accordance with, an ordinance adopted
 11 by a local agency pursuant to Section 65852.2.

12 (4) A residential motel.

13 (5) A mobilehome park, as governed under the Mobilehome
 14 Residency Law (Chapter 2.5 (commencing with Section 798) of
 15 Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational
 16 Vehicle Park Occupancy Law (Chapter 2.6 (commencing with
 17 Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code),
 18 the Mobilehome Parks Act (Part 2.1 (commencing with Section
 19 18200) of Division 13 of the Health and Safety Code), or the
 20 Special Occupancy Parks Act (Part 2.3 (commencing with Section
 21 18860) of Division 13 of the Health and Safety Code).

22 (6) Any other type of residential property that is not owned by
 23 the person or a member of the person’s household, for which the
 24 person or a member of the person’s household provides payments
 25 on a regular schedule in exchange for the right to occupy the
 26 residential property.

27 (m) “Transit-rich housing project” means a residential
 28 development, the parcels of which are all within a one-half mile
 29 radius of a major transit stop or a one-quarter mile radius of a stop
 30 on a high-quality bus corridor. A project shall be deemed to be
 31 within the radius if both of the following apply:

32 (1) All parcels within the project have no more than 25 percent
 33 of their area outside of a one-half mile radius of a major transit
 34 stop or a one-quarter mile radius of a stop on a high-quality bus
 35 corridor.

36 (2) No more than 10 percent of the residential units or 100 units,
 37 whichever is less, of the project are outside of a one-half mile
 38 radius of a major transit stop or a one-quarter mile radius of a stop
 39 on a high-quality bus corridor.

1 65918.51. ~~A~~(a) *Except as provided in subdivision (b) or*
 2 *Section 65918.58, on and after January 1, 2023, a local*
 3 *government shall, upon request of a development proponent, grant*
 4 *an equitable communities incentive, as specified in*~~Section~~
 5 ~~65918.53, Sections 65918.54 and 65918.55, when the development~~
 6 *proponent seeks and agrees to construct a multifamily residential*
 7 *development that satisfies the requirements specified in*~~Section~~
 8 ~~65918.52. Sections 65918.52 and 65918.53, and, if applicable,~~
 9 *Sections 65918.54 and 65918.55.*

10 (b) *A local government shall not be required to grant an*
 11 *equitable communities incentive pursuant to subdivision (a) if the*
 12 *local government has a local flexibility plan that has been reviewed*
 13 *and certified by the Department of Housing and Community*
 14 *Development pursuant to Section 65918.59.*

15 65918.52. ~~In order to be eligible for an equitable communities~~
 16 ~~incentive pursuant to this chapter, a~~ *A residential development*
 17 ~~shall meet is not eligible for an equitable communities incentive~~
 18 ~~pursuant to this chapter unless the residential development meets~~
 19 *all of the following criteria:*

20 (a) *The residential development is either a job-rich housing*
 21 *project or transit-rich housing project.*

22 (b) *The residential development is located on a site that meets*
 23 *the following requirements:*

24 (1) *At the time of application, the site is zoned to allow housing*
 25 *as an underlying use in the zone, including, but not limited to, a*
 26 *residential, mixed-use, or commercial zone, as defined and allowed*
 27 *by the local government.*

28 (2) *If the residential development is located within a coastal*
 29 *zone, as defined in Division 20 (commencing with Section 30000)*
 30 *of the Public Resources Code, the site*~~satisfies the requirements~~
 31 ~~specified in paragraph (2) of subdivision (a) of Section 65913.4.~~
 32 *meets the following conditions:*

33 (A) *The site satisfies the requirements specified in paragraph*
 34 *(2) of subdivision (a) of Section 65913.4.*

35 (B) *The site is located in a city that has a population equal to*
 36 *or greater than 50,000, based on the most recent United States*
 37 *Census Bureau data.*

38 (3) *The site is not located within any of the following:*

39 (A) ~~A coastal zone, as defined in Division 20 (commencing~~
 40 ~~with Section 30000) of the Public Resources Code, if the site is~~

1 also located in a city that has a population of less than 50,000,
 2 based on the most recent United States Census Bureau data.

3 (B)

4 (A) A very high fire hazard severity zone, as determined by the
 5 Department of Forestry and Fire Protection pursuant to Section
 6 51178, or within a very high fire hazard severity zone as indicated
 7 on maps adopted by the Department of Forestry and Fire Protection
 8 pursuant to Section 4202 of the Public Resources Code. A parcel
 9 is not ineligible within the meaning of this paragraph if it is either
 10 of the following:

11 (i) A site excluded from the specified hazard zones by a local
 12 agency, pursuant to subdivision (b) of Section 51179.

13 (ii) A site that has adopted fire hazard mitigation measures
 14 pursuant to existing building standards or state fire mitigation
 15 measures applicable to the development.

16 (C)

17 (B) A parcel for which either of the following apply:

18 (i) The parcel is a contributing parcel within a historic district
 19 established by an ordinance of the local government that was in
 20 effect as of December 31, 2010.

21 (ii) The parcel includes a structure that was listed on a state or
 22 federal register of historic resources before the date that the
 23 development proponent first submits an application for an equitable
 24 communities incentive pursuant to this chapter.

25 (c) If the residential development is located within a county that
 26 has a population equal to or less than 600,000, based on the most
 27 recent United States Census Bureau data, the residential
 28 development satisfies all of the following additional requirements:

29 (1) The site satisfies the requirements specified in paragraph
 30 (2) of subdivision (a) of Section 65913.4.

31 (2) The site is not located within either of the following:

32 (A) An architecturally or historically significant historic district,
 33 as defined in subdivision (h) of Section 5020.1 of the Public
 34 Resources Code.

35 (B) A special flood hazard area subject to inundation by the 1
 36 percent annual chance flood (100-year flood) as determined by
 37 the Federal Emergency Management Agency in any official maps
 38 published by the Federal Emergency Management Agency. If a
 39 development proponent is able to satisfy all applicable federal
 40 qualifying criteria in order to provide that the site satisfies this

1 ~~subparagraph and is otherwise eligible for streamlined approval~~
2 ~~under this section, a local government shall not deny the application~~
3 ~~on the basis that the development proponent did not comply with~~
4 ~~any additional permit requirement, standard, or action adopted by~~
5 ~~that local government that is applicable to that site. A development~~
6 ~~may be located on a site described in this subparagraph if either~~
7 ~~of the following are met:~~

8 ~~(i) The site has been subject to a Letter of Map Revision~~
9 ~~prepared by the Federal Emergency Management Agency and~~
10 ~~issued to the local jurisdiction.~~

11 ~~(ii) The site meets Federal Emergency Management Agency~~
12 ~~requirements necessary to meet minimum flood plain management~~
13 ~~criteria of the National Flood Insurance Program pursuant to Part~~
14 ~~59 (commencing with Section 59.1) and Part 60 (commencing~~
15 ~~with Section 60.1) of Subchapter B of Chapter I of Title 44 of the~~
16 ~~Code of Federal Regulations.~~

17 ~~(3) The residential development has a minimum density of 30~~
18 ~~dwelling units per acre in jurisdictions considered metropolitan,~~
19 ~~as defined in subdivision (f) of Section 65583.2, or a minimum~~
20 ~~density of 20 dwelling units per acre in jurisdictions considered~~
21 ~~suburban, as defined in subdivision (e) of Section 65583.2.~~

22 ~~(4) The residential development is located within a one-half~~
23 ~~mile radius of a major transit stop and within a city with a~~
24 ~~population greater than 50,000.~~

25 ~~(d) (1) If the local government has adopted an inclusionary~~
26 ~~housing ordinance requiring that the development include a certain~~
27 ~~number of units affordable to households with incomes that do not~~
28 ~~exceed the limits for moderate income, lower income, very low~~
29 ~~income, or extremely low income specified in Sections 50079.5,~~
30 ~~50093, 50105, and 50106 of the Health and Safety Code, and that~~
31 ~~ordinance requires that a new development include levels of~~
32 ~~affordable housing in excess of the requirements specified in~~
33 ~~paragraph (2), the residential development complies with that~~
34 ~~ordinance. The ordinance may provide alternative means of~~
35 ~~compliance that may include, but are not limited to, in-lieu fees,~~
36 ~~land dedication, offsite construction, or acquisition and~~
37 ~~rehabilitation of existing units.~~

38 ~~(2) (A) If the local government has not adopted an inclusionary~~
39 ~~housing ordinance, as described in paragraph (1), the residential~~
40 ~~development includes an affordable housing contribution for~~

~~households with incomes that do not exceed the limits for extremely low income, very low income, and low income specified in Sections 50093, 50105, and 50106 of the Health and Safety Code.~~

~~(B) For purposes of this paragraph, the residential development is subject to one of the following, as applicable:~~

~~(i) If the project has 10 or fewer units, no affordability contribution is imposed.~~

~~(ii) If the project has 11 to 20 residential units, the development proponent may pay an in-lieu fee to the local government for affordable housing, where feasible, pursuant to subparagraph (C).~~

~~(iii) If the project has more than 20 residential units, the development proponent shall do either of the following:~~

~~(I) Make a comparable affordability contribution toward housing offsite that is affordable to lower income households, pursuant to subparagraph (C).~~

~~(II) Include units on the site of the project that are affordable to extremely low income, very low income, or lower income households, as defined in Sections 50079.5, 50105, and 50106 of the Health and Safety Code, as follows:~~

Project Size	Inclusionary Requirement
21–200 units	15% lower income; or 8% very low income; or 6% extremely low income
201–350 units	17% lower income; or 10% very low income; or 8% extremely low income
351 or more units	25% lower income; or 15% very low income; or 11% extremely low income

~~(C) (i) The development proponent of a project that qualifies pursuant to clause (ii) or subclause (I) of clause (iii) of subparagraph (B) may make a comparable affordability contribution toward housing offsite that is affordable to lower income households, pursuant to this subparagraph.~~

~~(ii) For the purposes of this subparagraph, “comparable affordability contribution” means either a dedication of land or direct in-lieu fee payment to a housing provider that proposes to~~

1 build a residential development in which 100 percent of the units,
2 excluding manager's units, are sold or rented at affordable housing
3 cost, as defined in Section 50052.5 of the Health and Safety Code,
4 or affordable rent, as defined in Section 50053 of the Health and
5 Safety Code, subject to all of the following conditions:

6 (I) ~~The site, and if applicable, the dedicated land, is located~~
7 ~~within a one-half mile of the qualifying project.~~

8 (II) ~~The site, and if applicable, the dedicated land, is eligible~~
9 ~~for an equitable communities incentive.~~

10 (III) ~~The residential development that receives a dedication of~~
11 ~~land or in-lieu fee payment pursuant to this paragraph provides~~
12 ~~the same number of affordable units at the same income category,~~
13 ~~which would have been required onsite for the qualifying project~~
14 ~~pursuant to subclause (II) of clause (iii) of subparagraph (B) of~~
15 ~~paragraph (2).~~

16 (IV) ~~The value of the dedicated land or in-lieu fee payment must~~
17 ~~be at least equal to the capitalized value of the forgone revenue~~
18 ~~that the development proponent would have incurred if the~~
19 ~~qualifying project had provided the required number and type of~~
20 ~~affordable units onsite.~~

21 (V) ~~If the qualifying project includes 21 or more units of~~
22 ~~housing, the comparable affordability contribution is subject to a~~
23 ~~recorded covenant with the local jurisdiction. A copy of the~~
24 ~~covenant shall be provided to the Department of Housing and~~
25 ~~Community Development.~~

26 (iii) ~~For the purposes of this subparagraph, "qualifying project"~~
27 ~~means a project that receives an equitable communities incentive~~
28 ~~by providing a comparable affordability contribution.~~

29 (iv) ~~The qualifying development shall not be issued a certificate~~
30 ~~of occupancy before the residential development receiving a~~
31 ~~dedication of land or direct in-lieu fee payment pursuant to this~~
32 ~~subparagraph receives a building permit.~~

33 (D) ~~Affordability of units pursuant to this paragraph shall be~~
34 ~~restricted by deed for a period of 55 years for rental units or 45~~
35 ~~years for units offered for sale.~~

36 (e)

37 (c) ~~The site does not contain, or has not contained, either of the~~
38 ~~following:~~

39 (1) ~~Housing occupied by tenants within the seven years~~
40 ~~preceding the date of the application, including housing that has~~

1 been demolished or that tenants have vacated prior to the
2 application for a development permit.

3 (2) A parcel or parcels on which an owner of residential real
4 property has exercised their rights under Chapter 12.75
5 (commencing with Section 7060) of Division 7 of Title 1 to
6 withdraw accommodations from rent or lease within 15 years prior
7 to the date that the development proponent submits an application
8 pursuant to this chapter.

9 (f)

10 (d) The residential development complies with all applicable
11 labor, construction employment, and wage standards otherwise
12 required by law and any other generally applicable requirement
13 regarding the approval of a development project, including, but
14 not limited to, the local government's conditional use or other
15 discretionary permit approval process, the California
16 Environmental Quality Act (Division 13 (commencing with Section
17 21000) of the Public Resources Code), or a streamlined approval
18 process that includes labor protections.

19 (g)

20 (e) The residential development complies with all other relevant
21 standards, requirements, and prohibitions imposed by the local
22 government regarding architectural design, restrictions on or
23 oversight of demolition, impact fees, and community benefits
24 agreements.

25 (h)

26 (f) The equitable communities incentive shall not be used to
27 undermine the economic feasibility of delivering low-income
28 housing under the state density bonus program or a local
29 implementation of the state density bonus program, or any locally
30 adopted program that puts conditions on new development
31 applications on the basis of receiving a zone change or general
32 plan amendment in exchange for benefits such as increased
33 affordable housing, local hire, or payment of prevailing wages.

34 ~~65918.53. (a) (1) Any transit-rich or job-rich housing project~~
35 ~~within a county that has a population greater than 600,000, based~~
36 ~~on the most recent United States Census Bureau data, that meets~~
37 ~~the criteria specified in Section 65918.52 shall receive, upon~~
38 ~~request, an equitable communities incentive as follows:~~

1 65918.53. A residential development is not eligible for an
2 equitable communities incentive pursuant to this chapter unless
3 the residential development meets all of the following criteria:

4 (a) If the local government has adopted an inclusionary housing
5 ordinance requiring that the development include a certain number
6 of units affordable to households with incomes that do not exceed
7 the limits for moderate income, lower income, very low income,
8 or extremely low income specified in Sections 50079.5, 50093,
9 50105, and 50106 of the Health and Safety Code, and that
10 ordinance requires that a new development include levels of
11 affordable housing in excess of the requirements specified in
12 paragraph (2), the residential development complies with that
13 ordinance. The ordinance may provide alternative means of
14 compliance that may include, but are not limited to, in-lieu fees,
15 land dedication, offsite construction, or acquisition and
16 rehabilitation of existing units.

17 (b) (1) If the local government has not adopted an inclusionary
18 housing ordinance, as described in subdivision (a), the residential
19 development includes an affordable housing contribution for
20 households with incomes that do not exceed the limits for extremely
21 low income, very low income, and low income specified in Sections
22 50093, 50105, and 50106 of the Health and Safety Code.

23 (2) For purposes of this subdivision, a residential development
24 satisfies the affordable housing contribution requirement of this
25 subdivision if the residential development is subject to one of the
26 following, as applicable:

27 (A) If the project has 10 or fewer units, no affordability
28 contribution is imposed.

29 (B) If the project has 11 to 20 residential units, the development
30 proponent may pay an in-lieu fee to the local government for
31 affordable housing, where feasible, pursuant to paragraph (3).

32 (C) If the project has more than 20 residential units, the
33 development proponent shall do either of the following:

34 (i) Make a comparable affordability contribution toward housing
35 offsite that is affordable to lower income households, pursuant to
36 paragraph (3).

37 (ii) Include units on the site of the project that are affordable
38 to extremely low income, very low income, or lower income
39 households, as defined in Sections 50079.5, 50105, and 50106 of
40 the Health and Safety Code, as follows:

1	<i>Project Size</i>	<i>Inclusionary Requirement</i>
2	21–200 units	15% lower income; or
3		8% very low income; or
4		6% extremely low income
5	201–350 units	17% lower income; or
6		10% very low income; or
7		8% extremely low income
8	351 or more units	25% lower income; or
9		15% very low income; or
10		11% extremely low income

11
 12 (3) (A) The development proponent of a project that qualifies
 13 pursuant to subparagraph (B) of, or clause (i) of subparagraph
 14 (C) of, paragraph (2) may make a comparable affordability
 15 contribution toward housing offsite that is affordable to lower
 16 income households, pursuant to this paragraph.

17 (B) For the purposes of this paragraph, “comparable
 18 affordability contribution” means either a dedication of land or
 19 direct in-lieu fee payment to a housing provider that proposes to
 20 build a residential development in which 100 percent of the units,
 21 excluding manager’s units, are sold or rented at affordable housing
 22 cost, as defined in Section 50052.5 of the Health and Safety Code,
 23 or affordable rent, as defined in Section 50053 of the Health and
 24 Safety Code, subject to all of the following conditions:

25 (i) The site, and, if applicable, the dedicated land are located
 26 within a one-half mile of the qualifying project.

27 (ii) The site, and, if applicable, the dedicated land are eligible
 28 for an equitable communities incentive.

29 (iii) The residential development that receives a dedication of
 30 land or in-lieu fee payment pursuant to this paragraph provides
 31 the same number of affordable units at the same income category
 32 that would have been required on the site of the qualifying project
 33 pursuant to clause (ii) of subparagraph (C) of paragraph (2) for
 34 the qualifying project to be eligible for an equitable community
 35 incentive if the development proponent did not make a comparable
 36 affordability contribution.

37 (iv) The value of the dedicated land or in-lieu fee payment is at
 38 least equal to the capitalized value of the forgone revenue that the
 39 development proponent would have incurred if the qualifying

1 project has provided the required number and type of affordable
2 units onsite.

3 (v) If the qualifying project includes 21 or more units of housing,
4 the comparable affordability contribution is subject to a recorded
5 covenant with the local jurisdiction. A copy of the covenant shall
6 be provided to the Department of Housing and Community
7 Development.

8 (C) For the purposes of this paragraph, “qualifying project”
9 means a project that receives an equitable communities incentive
10 by providing a comparable affordability contribution.

11 (D) The qualifying development shall not be issued a certificate
12 of occupancy before the residential development receiving a
13 dedication of land or direct in-lieu fee payment pursuant to this
14 paragraph receives a building permit.

15 (4) The affordability of units made affordable to meet the
16 requirements of this subdivision shall be restricted by deed for a
17 period of 55 years for rental units or 45 years for units offered for
18 sale.

19 (c) Residents living within one-half mile of the development at
20 time of application shall receive priority for the following:

21 (1) Forty percent of the affordable housing units in the
22 development that are reserved for lower income households.

23 (2) Forty percent of the affordable housing units in the
24 development that are reserved for very low income households.

25 (3) Forty percent of the affordable housing units in the
26 development that are reserved for extremely low income
27 households.

28 65918.54. An eligible applicant that proposes a residential
29 development within a county that has a population greater than
30 600,000, based on the most recent United States Census Bureau
31 data, shall receive, upon request, an equitable communities
32 incentive as follows:

33 (a) If the residential development is a transit-rich or job-rich
34 housing project, the applicant shall receive both of the following:

35 (A)

36 (1) A waiver from maximum controls on density.

37 (B)

38 (2) A waiver from minimum automobile parking requirements
39 greater than 0.5 automobile parking spots per unit.

40 ~~(2) An eligible applicant proposing a~~

~~(b) If the residential development within a county that has a population greater than 600,000, based on the most recent United States Census Bureau data, that is located within a one-half mile radius, but outside a one-quarter mile radius, of a major transit stop stop, the applicant shall receive, in addition to the incentives specified in paragraph (1), subdivision (a), waivers from all of the following:~~

~~(A)~~

~~(1) Maximum height requirements less than 45 feet.~~

~~(B)~~

~~(2) Any requirement governing the relationship between the size of the parcel and the area that the building may occupy that would restrict the structure to a FAR of less than 2.5.~~

~~(C)~~

~~(3) Notwithstanding subparagraph (B) of paragraph (1), paragraph (2) of subdivision (a), any minimum automobile parking requirement.~~

~~(3) An eligible applicant proposing a~~

~~(c) If the residential development within a county that has a population greater than 600,000, based on the most recent United States Census Bureau data, that is located within a one-quarter mile radius of a major transit stop stop, the applicant shall receive, in addition to the incentives specified in paragraph (1), subdivision (a), waivers from all of the following:~~

~~(A)~~

~~(1) Maximum height requirements less than 55 feet.~~

~~(B)~~

~~(2) Any requirement governing the relationship between the size of the parcel and the area that the building may occupy that would restrict the structure to a FAR of less than 3.25.~~

~~(C)~~

~~(3) Notwithstanding paragraph (2) of subdivision (a), any minimum automobile parking requirement.~~

~~(b) A residential development within a county that has a population less than or equal to 600,000, based on the most recent United States Census Bureau data, that meets the criteria specified in Section 65918.52 shall receive, upon request, an equitable communities incentive as follows:~~

~~(1) A waiver from maximum controls on density, subject to paragraph (3) of subdivision (c) of Section 65918.52.~~

1 ~~(2) A waiver from maximum height limitations less than or~~
2 ~~equal to one story, or 15 feet, above the highest allowable height~~
3 ~~for mixed use or residential use. For purposes of this paragraph,~~
4 ~~“highest allowable height” means the tallest height, including~~
5 ~~heights that require conditional approval, allowable pursuant to~~
6 ~~zoning and any specific or area plan that covers the parcel.~~

7 ~~(3) Any requirement governing the relationship between the~~
8 ~~size of the parcel and the area that the building may occupy that~~
9 ~~would restrict the structure to a FAR of less than 0.6 times the~~
10 ~~number of stories proposed for the project.~~

11 ~~(4) A waiver from minimum automobile parking requirements,~~
12 ~~as follows:~~

13 ~~(A) If the residential development is located within a one-quarter~~
14 ~~mile radius of a rail transit station in a city with a population of~~
15 ~~greater than 100,000, based on the most recent United States~~
16 ~~Census Bureau data, the residential development project shall~~
17 ~~receive a waiver from any minimum automobile parking~~
18 ~~requirement.~~

19 ~~(B) If the residential development does not meet the criteria~~
20 ~~specified in clause (i), the residential development project shall~~
21 ~~receive a waiver from minimum automobile parking requirements~~
22 ~~of more than 0.5 parking spaces per unit.~~

23 ~~(c) Notwithstanding any other law, a project that qualifies for~~
24 ~~an equitable communities incentive may also apply for a density~~
25 ~~bonus, incentives or concessions, and parking ratios in accordance~~
26 ~~with subdivision (b) of Section 65915. To calculate a density bonus~~
27 ~~for a project that receives an equitable communities incentive, the~~
28 ~~“otherwise maximum allowable gross residential density” as~~
29 ~~described in subdivision (f) of Section 65915 shall be equal to the~~
30 ~~proposed number of units in, or the proposed square footage of,~~
31 ~~the residential development after applying the equitable~~
32 ~~communities incentive received pursuant to this chapter. In no~~
33 ~~case may a city, county, or city and county apply any development~~
34 ~~standard that will have the effect of physically precluding the~~
35 ~~construction of a development meeting the criteria of this chapter~~
36 ~~and subdivision (b) of Section 65915 at the unit count or square~~
37 ~~footage or with the concessions or incentives permitted by this~~
38 ~~chapter and as may be increased under Section 65915 in accordance~~
39 ~~with this subdivision, but no additional waivers or reductions of~~

development standards, as described in subdivision (e) of Section 65915 shall be permitted.

(d) ~~The local government shall grant an incentive requested by an eligible applicant pursuant to this chapter unless the local government makes a written finding, based on substantial evidence, that the incentive would have a specific, adverse impact on any real property or historic district that is listed on a federal or state register of historical resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable.~~

(e) ~~An eligible applicant proposing a project that meets all of the requirements under Section 65913.4 may submit an application for streamlined, ministerial approval in accordance with that section.~~

(f) ~~The local government may modify or expand the terms of an equitable communities incentive provided pursuant to this chapter, provided that the equitable communities incentive is consistent with, and meets the minimum standards specified in, this chapter.~~

65918.55. (a) *An eligible applicant that proposes a residential development within a county that has a population less than or equal to 600,000, based on the most recent United States Census Bureau data, that meets all of the requirements in subdivision (b) shall receive, upon request, an equitable communities incentive as follows:*

(1) *A waiver from maximum controls on density.*

(2) *A waiver from maximum height limitations less than or equal to one story, or 15 feet, above the highest allowable height for mixed use or residential use. For purposes of this paragraph, "highest allowable height" means the tallest height, including heights that require conditional approval, allowable pursuant to zoning and any specific or area plan that covers the parcel.*

(3) *Any requirement governing the relationship between the size of the parcel and the area that the building may occupy that would restrict the structure to a FAR of less than 0.6 times the number of stories proposed for the project.*

(4) *A waiver from minimum automobile parking requirements, as follows:*

(A) *If the residential development is located within a one-quarter mile radius of a rail transit station in a city with a population of*

1 greater than 100,000, based on the most recent United States
2 Census Bureau data, the residential development project shall
3 receive a waiver from any minimum automobile parking
4 requirement.

5 (B) If the residential development does not meet the criteria
6 specified in subparagraph (A), the residential development project
7 shall receive a waiver from minimum automobile parking
8 requirements of more than 0.5 parking spaces per unit.

9 (b) To be eligible for an equitable communities incentive
10 outlined in subdivision (a), a residential development shall meet
11 all of the following requirements:

12 (1) The site satisfies the requirements specified in paragraph
13 (2) of subdivision (a) of Section 65913.4.

14 (2) The site is not located within either of the following:

15 (A) An architecturally or historically significant historic district,
16 as defined in subdivision (h) of Section 5020.1 of the Public
17 Resources Code.

18 (B) A special flood hazard area subject to inundation by the
19 1-percent annual chance flood (100-year flood), as determined by
20 the Federal Emergency Management Agency in any official maps
21 published by the Federal Emergency Management Agency. If a
22 development proponent is able to satisfy all applicable federal
23 qualifying criteria in order to provide that the site satisfies this
24 subparagraph and is otherwise eligible for an equitable
25 communities incentive under this chapter, a local government shall
26 not deny the application on the basis that the development
27 proponent did not comply with any additional permit requirement,
28 standard, or action adopted by that local government that is
29 applicable to that site. A development may be located on a site
30 described in this subparagraph if either of the following are met:

31 (i) The site has been subject to a Letter of Map Revision
32 prepared by the Federal Emergency Management Agency and
33 issued to the local jurisdiction.

34 (ii) The site meets Federal Emergency Management Agency
35 requirements necessary to meet minimum flood plain management
36 criteria of the National Flood Insurance Program pursuant to Part
37 59 (commencing with Section 59.1) and Part 60 (commencing with
38 Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code
39 of Federal Regulations.

1 (3) The residential development has a minimum density of 30
2 dwelling units per acre in jurisdictions considered metropolitan,
3 as defined in subdivision (f) of Section 65583.2, or a minimum
4 density of 20 dwelling units per acre in jurisdictions considered
5 suburban, as defined in subdivision (e) of Section 65583.2.

6 (4) The residential development is located within a one-half
7 mile radius of a major transit stop and within a city with a
8 population greater than 50,000.

9 (c) Notwithstanding any other law, a project that qualifies for
10 an equitable communities incentive may also apply for a density
11 bonus, incentives or concessions, and parking ratios in accordance
12 with subdivision (b) of Section 65915. To calculate a density bonus
13 for a project that receives an equitable communities incentive, the
14 “otherwise maximum allowable gross residential density,” as
15 described in subdivision (f) of Section 65915, shall be equal to the
16 proposed number of units in, or the proposed square footage of,
17 the residential development after applying the equitable
18 communities incentive received pursuant to this chapter. In no
19 case may a city, county, or city and county apply any development
20 standard that will have the effect of physically precluding the
21 construction of a development meeting the criteria of this chapter
22 and subdivision (b) of Section 65915 at the unit count or square
23 footage or with the concessions or incentives permitted by this
24 chapter and as may be increased under Section 65915 in
25 accordance with this subdivision, but no additional waivers or
26 reductions of development standards, as described in subdivision
27 (e) of Section 65915 shall be permitted.

28 65918.56. (a) The local government shall grant an incentive
29 requested by an eligible applicant pursuant to this chapter unless
30 the local government makes a written finding, based on substantial
31 evidence, that the incentive would have a specific, adverse impact
32 on any real property or historic district that is listed on a federal
33 or state register of historical resources and for which there is no
34 feasible method to satisfactorily mitigate or avoid the specific,
35 adverse impact without rendering the development unaffordable.

36 (b) An eligible applicant proposing a project that meets all of
37 the requirements under Section 65913.4 may submit an application
38 for streamlined, ministerial approval in accordance with that
39 section.

1 (c) *The local government may modify or expand the terms of*
2 *an equitable communities incentive provided pursuant to this*
3 *chapter, provided that the equitable communities incentive is*
4 *consistent with, and meets the minimum standards specified in,*
5 *this chapter.*

6 ~~65918.54.~~

7 65918.57. The Legislature finds and declares that this chapter
8 addresses a matter of statewide concern rather than a municipal
9 affair as that term is used in Section 5 of Article XI of the
10 California Constitution. Therefore, this chapter applies to all cities,
11 including charter cities.

12 ~~65918.55.~~

13 65918.58. (a) On or before July 1, ~~2020~~, 2023, Sections
14 65918.51 to 65918.54, inclusive, shall not apply to a potentially
15 sensitive community. After July 1, ~~2020~~, 2023, Sections 65918.51
16 to 65918.54, inclusive, shall apply in any potentially sensitive
17 community that is not identified as a sensitive community pursuant
18 to subdivision (b).

19 (b) On or before July 1, ~~2020~~, 2023, sensitive communities in
20 each county shall be identified and mapped in accordance with the
21 following:

22 (1) The council of governments, or the county board of
23 supervisors in a county without a council of governments, shall
24 establish a working group comprised of residents of potentially
25 sensitive communities within the county, ensuring equitable
26 representation of vulnerable populations, including, but not limited
27 to, renters, low-income people, and members of classes protected
28 under the California Fair Employment and Housing Act (Part 2.8
29 (commencing with Section 12900) of Division 3 of Title 2).

30 (2) The working group shall develop a map of sensitive
31 communities within the county, which shall include some or all
32 of the areas identified as potentially sensitive communities pursuant
33 to subdivision (i) of Section 65918.50. The working group shall
34 prioritize the input of residents from each potentially sensitive
35 community in making a determination about that community.

36 (3) Each board of supervisors or council of governments shall
37 adopt the sensitive communities map for the county, along with
38 an explanation of the composition and function of the working
39 group and the community process and methodology used to create
40 the maps, at a public hearing held on or before July 1, ~~2020~~, 2023.

(c) Sections 65918.51 to 65918.54, inclusive, shall apply in a sensitive community on and after January 1, 2026, unless the city or county in which the sensitive community is located has adopted a community plan for an area that includes the sensitive community that is aimed toward increasing residential density and multifamily housing choices near transit stops and meets all of the following:

(1) The community plan is not in conflict with the goals of this chapter.

(2) The community plan permits increased density and multifamily development near transit, with all upzoning linked to onsite affordable housing requirements that meet or exceed the affordable housing requirements in Sections 65918.51 to 65918.54, inclusive. Community plans shall, at a minimum, be consistent with the overall residential development capacity and the minimum affordability standards set forth in Sections 65918.51 to 65918.54, inclusive, within the boundaries of the community plan.

(3) The community plan includes provisions to protect vulnerable residents from displacement.

(4) The community plan promotes economic justice for workers and residents.

(5) The community plan was developed in partnership with at least one of the following:

(A) A nonprofit or community organization that focuses on organizing low-income residents in the sensitive community.

(B) A nonprofit or community organization that focuses on organizing low-income residents in the jurisdiction.

(C) If there are no nonprofit or community organizations working within the sensitive community or the jurisdiction, a nonprofit with demonstrated experience conducting outreach to low-income communities.

(6) Residents of the sensitive community are engaged throughout the planning process, including through at least three community meetings that are held at times and locations accessible to low-income residents.

(7) All public documents and meetings related to the planning process are translated into all languages spoken by at least 25 percent of residents of the sensitive community.

(8) The community plan is adopted before July 1, 2025.

(d) Each city and each county shall make reasonable efforts to develop a community plan for any sensitive communities within

1 its jurisdiction. A community plan may address other locally
 2 identified priorities, provided they are not in conflict with the intent
 3 of this chapter or any other law. A city or county may designate a
 4 community plan adopted before July 1, ~~2020~~, 2023, as the plan
 5 that meets the requirements of this ~~paragraph~~, *subdivision*, provided
 6 that the plan meets all criteria in this section.

7 (e) Notwithstanding any other provision of this section, Sections
 8 65918.51 to 65918.54, inclusive, shall apply in any sensitive
 9 community if all of the following apply:

10 (1) At least 20 percent of adult residents of the sensitive
 11 community sign a petition attesting that the community desires to
 12 make the provisions of Sections 65918.51 to 65918.54, inclusive,
 13 applicable in the area. The petition shall describe in plain language
 14 the planning standards set forth in Sections 65918.51 to 65918.54,
 15 inclusive; be translated into all languages spoken by at least 25
 16 percent of residents in the affected area; and collect contact
 17 information from signatories to the petition, including first, middle,
 18 and last name, mailing address, and phone number and email
 19 address if available.

20 (2) The local government has verified the petition to ensure
 21 compliance with paragraph (1).

22 (3) Following signature verification, the ~~local government~~ *city*
 23 *or county* provides public notice and opportunity to comment to
 24 residents of the affected area and holds a minimum of three public
 25 hearings in the affected area at a time and in a place and manner
 26 accessible to low-income residents and other vulnerable
 27 populations.

28 (4) The governing body for the city or county in which the
 29 sensitive community is located determines, by majority vote, to
 30 apply this chapter in the affected area.

31 (f) It is the intent of the Legislature to consider all of the
 32 following:

33 (1) Tasking local government entities with greater community
 34 connection with convening and administering the process for
 35 identifying sensitive communities.

36 (2) Requiring review by the Department of Housing and
 37 Community Development of the designation of sensitive
 38 communities.

39 65918.59. (a) *On or before July 1, 2021, the Governor's Office*
 40 *of Planning and Research, in consultation with the Department*

1 of Housing and Community Development, shall develop and
 2 publish on its internet website rules, regulations, or guidelines for
 3 the submission and approval of a local flexibility plan. The rules,
 4 regulations, or guidelines shall include requirements that the local
 5 government demonstrate that the local flexibility plan would do
 6 the following:

7 (1) Affirmatively further fair housing, as that term is defined in
 8 Section 8899.50, to an extent as great or greater than if the local
 9 government were to grant equitable communities incentives in
 10 fulfillment of Section 65918.51.

11 (2) Achieve a standard of transportation efficiency as great or
 12 greater than if the local government were to grant equitable
 13 communities incentives in fulfillment of Section 65918.51.

14 (3) Increase overall feasible housing capacity for households
 15 of lower, moderate, and above moderate incomes, considering
 16 economic factors such as cost of likely construction types,
 17 affordable housing requirements, and the impact of local
 18 development fees.

19 (b) On or after July 1, 2021, a local government may submit a
 20 local flexibility plan for review and approval by the Department
 21 of Housing and Community Development pursuant to the rules,
 22 regulations, or guidelines adopted pursuant to subdivision (a).

23 (c) A local government submitting a local flexibility plan and
 24 the Department of Housing and Community Development shall
 25 process, review, and certify the local flexibility plan as
 26 expeditiously as possible after local community planning and
 27 stakeholder outreach is complete.

28 (d) Any rule, regulation, or guideline developed and published
 29 by the Governor's Office of Planning and Research pursuant to
 30 this section shall not be subject to Chapter 3.5 (commencing with
 31 Section 11340) of Part 1 of Division 3 of Title 2.

32 SEC. 5. No reimbursement is required by this act pursuant to
 33 Section 6 of Article XIII B of the California Constitution because
 34 a local agency or school district has the authority to levy service
 35 charges, fees, or assessments sufficient to pay for the program or
 36 level of service mandated by this act, within the meaning of Section
 37 17556 of the Government Code.

O



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ADOPTION OF RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO IMPLEMENT THE EMPLOYEE SHARE OF EMPLOYER CONTRIBUTION IN ACCORDANCE WITH SECTION 20516 OF THE CALIFORNIA GOVERNMENT CODE

RECOMMENDATION(S)

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement the pension cost share provision in accordance with California Government Code section 20516;
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

In the most recent negotiations between the City and the represented labor units, the parties agreed to Memoranda of Understanding (MOUs) that include provisions for employees to continue employee share of employer contribution to assist in curtailing the City's growing pension expense. While Council has already approved these provisions in the MOUs, approval of this resolution to amend the pension contracts is an administrative step required by CalPERS in order to ensure that employees receive credit for their increased contributions. The CalPERS contract amendment process is stringent and complex, which resulted in staff combining the implementation steps for these units.

The agreed upon cost share is applicable to all members (classic and California Public Employees' Pension Reform Act (PEPRA)), both Safety and Miscellaneous, and by collective bargaining unit as summarized below:

Employee share of CalPERS Employer Contribution

Bargaining Unit	FY19-20 Actual	FY20-21 Anticipated
POA – Safety Classic (SWORN Employees)	6.120%	6.120%
POA – Safety PEPRA (SWORN Employees)	1.329%	1.867%
POA – Miscellaneous Classic (NON-SWORN Employees)	3.604%	4.485%
POA – Miscellaneous PEPRA (NON-SWORN Employees)	3.604%	4.485%
AFSCME – Miscellaneous Classic and PEPRA	3.604%	4.485%
CSOA – Miscellaneous Classic and PEPRA	3.604%	4.485%
Unrepresented (Management) – Miscellaneous Classic and PEPRA	3.604%	4.485%

The first step in the process is for the City Council to adopt a Resolution of Intent and conduct a first reading of the ordinance amending the California Public Employees Retirement System (CalPERS) contract. An amendment to the contract, which changes the employees' rate of contribution, requires an anonymous ballot election among the employees affected. This election must follow adoption of the Resolution of Intention and precede adoption of the final documents. The final ordinance will return to Council for approval of the second reading and adoption on March 18, 2020. The contract amendment will become effective during the payroll period 30 days after this ordinance is adopted.

With the employer contribution of pension costs continuing to rise, it was in the City's best interest to negotiate a cost share arrangement with all bargaining units. Although the cost share arrangements have already been agreed upon through the MOUs, with the City Council approval in December 2018, CalPERS requires this administrative step for Council to adopt a resolution in order to amend the pension contracts. The contract amendment will not impact the employees' cost share amount, but will give employees credit for their contributions. This amendment seeks to bring the CalPERS contract in alignment with the current adopted MOUs.

COMMUNITY ENGAGEMENT: Inform

Public notice was published in the local newspaper on February 7, 2020, informing the community of the proposed amendment of CalPERS contract.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 5, 2018, the City Council approved the current MOUs with the American Federation of State, County, and Municipal Employees (AFSCME), the Community Service Officers' Association (CSOA), Police Officers' Association (POA) and corresponding salary schedules.

On September 4, 2019, the City Council approved the current Management, Professional, and Confidential Employees Resolution and corresponding salary schedules.

FISCAL AND RESOURCE IMPACT:

The additional employee contribution of the CalPERS employer contribution has been incorporated in the City budget.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. Resolution of Intention [Amendments]
2. Ordinance CalPERS
3. Contract Amendment MorganHill

**RESOLUTION OF INTENTION
TO APPROVE AN AMENDMENT TO CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
CITY COUNCIL
CITY OF MORGAN HILL**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of 3.604 % for local miscellaneous members in the Morgan Hill Police Officers' Association, Unrepresented Management group, Community Service Officers' Association and American Federation of State, County, and Municipal Employees; 6.120% for classic local safety members in the Morgan Hill Police Officers' Association and 1.329% for new local safety members in the Morgan Hill Police Officers' Association.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: _____
Presiding Officer

Title

Date adopted and approved

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MORGAN HILL AUTHORIZING AN AMENDMENT TO THE
CONTRACT BETWEEN THE CITY OF MORGAN HILL AND
THE BOARD OF ADMINISTRATION OF THE CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
ORDAIN AS FOLLOWS:**

SECTION 1: That an amendment to the contract between the City of Morgan Hill and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2: The City Manager or his designee is authorized, empowered, and directed to execute said amendment for and on behalf of the City of Morgan Hill.

SECTION 73: Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

The foregoing ordinance was introduced and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the day of 2020, and was finally adopted at a regular meeting of said Council on the day of 2020, and said ordinance was duly passed and adopted in accordance with law.

PASSED AND ADOPTED by the City Council of Morgan Hill at the regular meeting held on the __th day of _____, 2020 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

RICH CONSTANTINE, MAYOR

ATTEST:

DATE:

Attachment: Ordinance CalPERS [Revision 1] (2645 : CalPERS Contract Amendment)

IRMA TORREZ, City Clerk

Effective:

∞ CERTIFICATE OF THE CITY CLERK ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at the meeting held on this _____ day of _____, 2020 and has been published pursuant to Government Code.

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

DATE: _____

Irma Torrez, City Clerk



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Morgan Hill

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1964, and witnessed January 8, 1964, and as amended effective June 1, 1972, May 1, 1976, January 1, 1977, December 17, 1981, August 1, 1982, August 16, 1983, July 1, 1988, January 7, 1990, April 29, 1990, August 17, 1991, June 21, 1997, April 17, 1999, February 20, 2000, July 1, 2002 and June 18, 2006 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective June 18, 2006, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:
 1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local safety members and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1964 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after June 18, 2006 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after June 18, 2006 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service prior to September 30, 1975, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
12. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21574 (Fourth Level of 1959 Survivor Benefits).
 - b. Section 20903 (Two Years Additional Service Credit) for local miscellaneous members only.

- c. Section 20042 (One-Year Final Compensation) for classic members only.
- d. Section 20965 (Credit for Unused Sick Leave).
- e. Section 21024 (Military Service Credit as Public Service) for local police members only.
- f. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contract, 3.604% for local miscellaneous members in the Morgan Hill Police Officers' Association, Unrepresented Management group, Community Service Officers' Association and American Federation of State, County, and Municipal Employees; 6.120% for classic local safety members in the Morgan Hill Police Officers' Association; and 1.329% for new local safety members in the Morgan Hill Police Officers' Association.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

- 13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 16, 1983. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 15. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.

- b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MORGAN HILL

BY _____
ARNITA PAIGE, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT DECEMBER 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

Community Engagement and Messaging

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 Fiscal Year 2019-20 six months ended December 31, 2019. Overall, the City received 37% of the budgeted revenues for all funds as there is typically a delay in remittances. The amount received year to date for all funds is approximately \$1.9 million or 4% lower than prior year at this time.

The decrease was partially led by an overall decrease in Capital Projects Funds revenues of approximately \$2.1 million compared to prior year at this time, partially offset by an increase in Enterprise Funds revenues of about \$0.9 million. General Fund revenues totaled \$13.5 million, a slight increase of about \$0.1 million or 1% from a year ago at this time. Expenditures, including encumbrances amounted to \$22.6 million or 51% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers, such as Cal-West Lighting and Signal Maintenance for the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

Development Services Fund revenues totaled \$2.4 million or 46% of the budget, an increase of 4% from prior fiscal year at this time of \$2.3 million. Expenditures, including encumbrances totaled \$3.3 million or 55% of the budgeted appropriation.

Enterprise Funds revenues which comprised of Water and Sewer totaled \$19.0 million or 47% of the budget, an increase of \$0.9 million or 5% from a year ago at this time primarily due to higher sewer and water sales. Revenues from water sales are expected

to come in slightly better than budget due to higher water consumption than estimated. Revenues from sewer operations are projected to come in as budgeted. Expenditures, including encumbrances amounted to \$22.0 million or 39% of the budget.

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 November 4, 2019 through February 7, 2020.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports to inform City officials, the Council, the community, and various lenders and stakeholders about the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

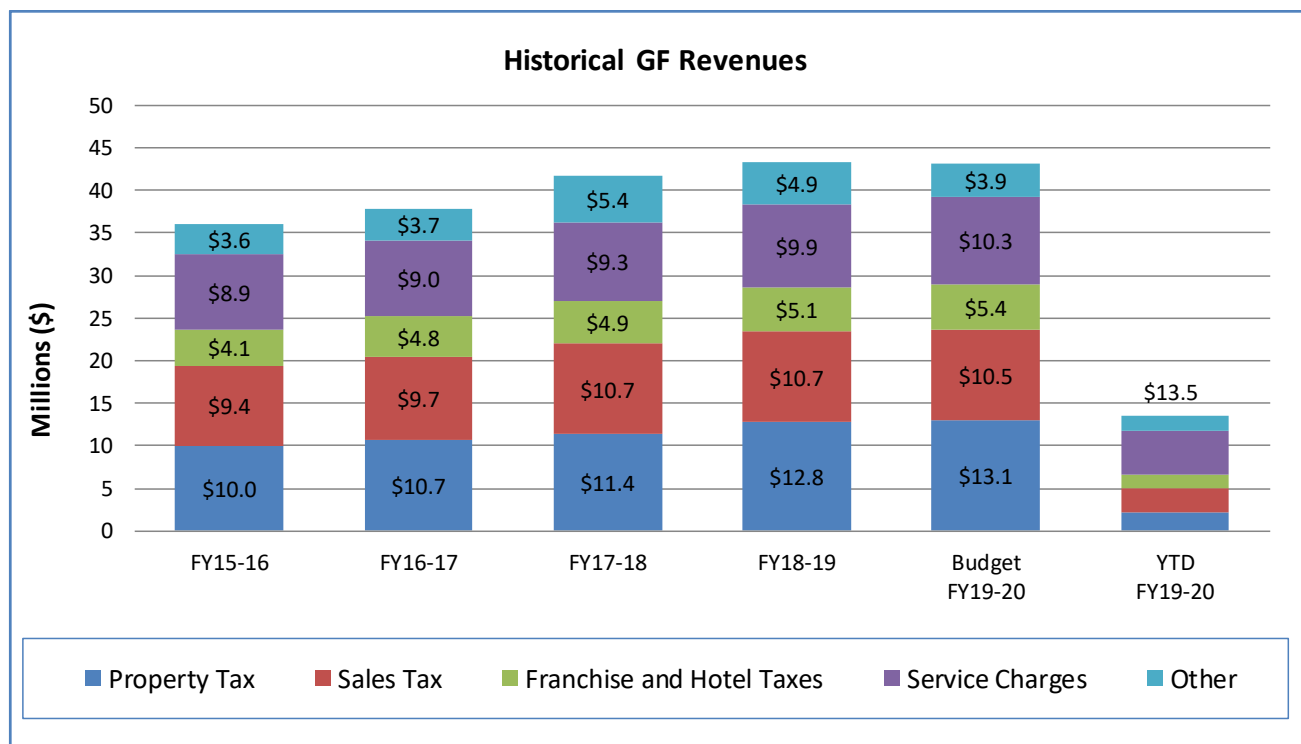
1. December 2019 Financial Statement Analysis
2. December 2019 Financial and Investment Report
3. Presentation - 2nd Qtr FY19-20 Financial Report



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED DECEMBER 2019 – 50% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of December totaled \$13.5 million, or 31% 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. The current projection 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 \$43.2 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The chart below shows historical General Fund revenues by major revenue category from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of December 31, 2019.

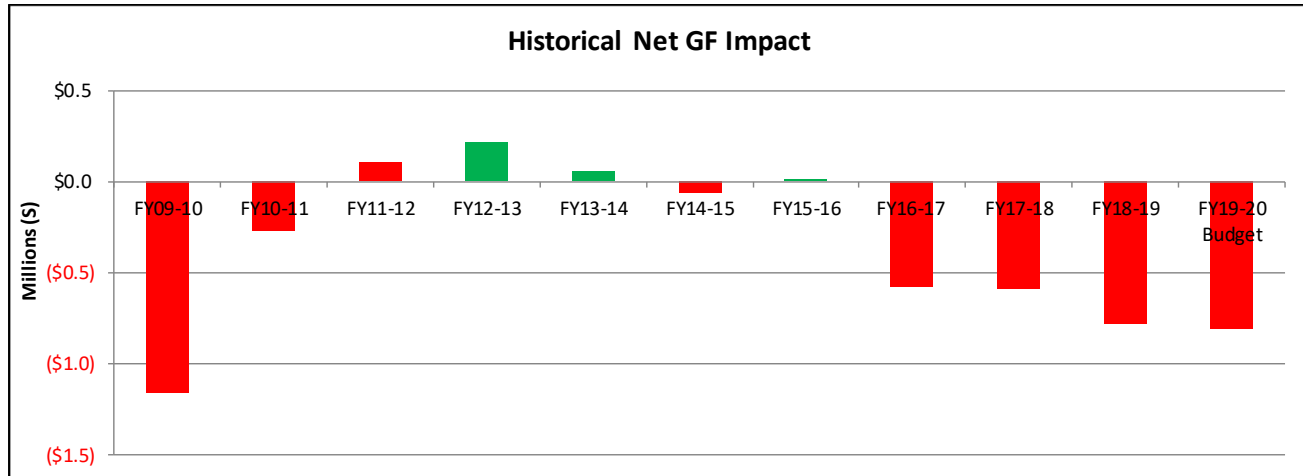


General Fund expenditures and encumbrances as of December 31, 2019 totaled \$22.6 million, of which approximately \$1.9 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED DECEMBER 2019 – 50% 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 December. Without the carry-over encumbrances, through the month of December operations resulted in a smaller negative impact to the general fund of approximately \$260,000. 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 December totaled \$2.4 million, a slight improvement from prior year to date. Expenditures, including encumbrances, totaled \$3.3 million. Without the outstanding encumbrances, however, expenditures through the month of December amounted to \$2.7 million. The fund is budgeted to end the fiscal year with an operating 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 and special projects.
- **Debt Service Funds** – Expenditures through the month of December totaled \$0.5 million. 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 DECEMBER 2019 – 50% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through the month of December totaled \$4.8 million. Expenditures and outstanding encumbrances totaled \$5.7 million or approximately 48% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of December 31, 2019.

(amount in millions)	FY15-16	FY16-17	FY17-18	FY18-19	Budget FY19-20	YTD FY19-20
Revenues	10.2	9.7	10.3	11.4	12.1	4.8
Expenditures	12.0	9.8	10.8	11.4	12.1	5.7
Operating Margin	(1.8)	(0.1)	(0.5)	-	-	(0.9)
Operating Margin without Encumbrances	(1.8)	(0.0)	(0.3)	0.4	-	(0.3)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of December totaled \$7.2 million. Water Operations expenditures, including outstanding encumbrances, totaled \$8.8 million for the year. Without the encumbrances, however, the expenditures amounted to \$7.3 million. The table below shows Water Operations revenues and expenditures from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of December 31, 2019.

(amount in millions)	FY15-16	FY16-17	FY17-18	FY18-19	Budget FY19-20	YTD FY19-20
Revenues	8.5	10.9	13.0	14.2	14.8	7.2
Expenditures	9.7	11.2	12.1	14.3	15.2	8.8
Operating Margin	(1.2)	(0.3)	0.9	(0.1)	(0.4)	(1.6)
Operating Margin without Encumbrances	(1.2)	(0.1)	1.4	0.8	(0.4)	(0.1)

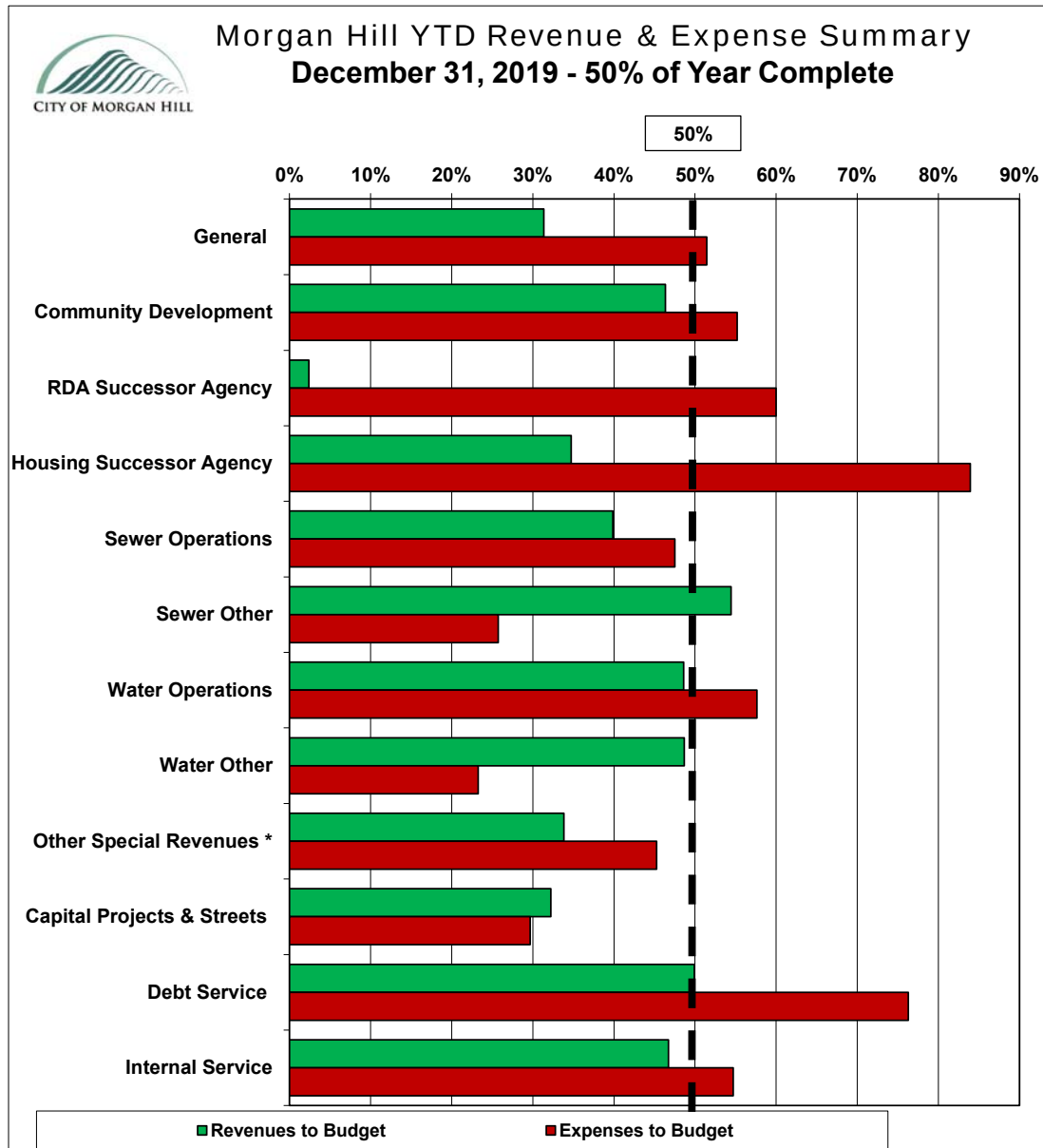
- **Investments** – Three securities were called and one security was purchased during the month of December 2019. Total interest earnings received on investments were \$71,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
December 31, 2019 - 50% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 13,534,749	31%	\$ 22,640,309	51%
Community Development	2,438,927	46%	3,302,764	55%
RDA Successor Agency	165,437	2%	4,182,646	60%
Housing Successor Agency	192,143	35%	785,424	84%
Sewer Operations	4,831,790	40%	5,742,917	48%
Sewer Other	4,334,348	54%	6,108,653	26%
Water Operations	7,181,837	49%	8,753,236	58%
Water Other	2,603,705	49%	1,397,678	23%
Other Special Revenues *	1,306,296	34%	1,745,139	45%
Capital Projects & Streets	6,736,023	32%	18,525,166	30%
Debt Service	338,271	50%	528,198	76%
Internal Service	5,595,867	47%	6,241,480	55%
TOTAL FOR ALL FUNDS	\$ 49,259,393	37%	\$ 79,953,610	41%

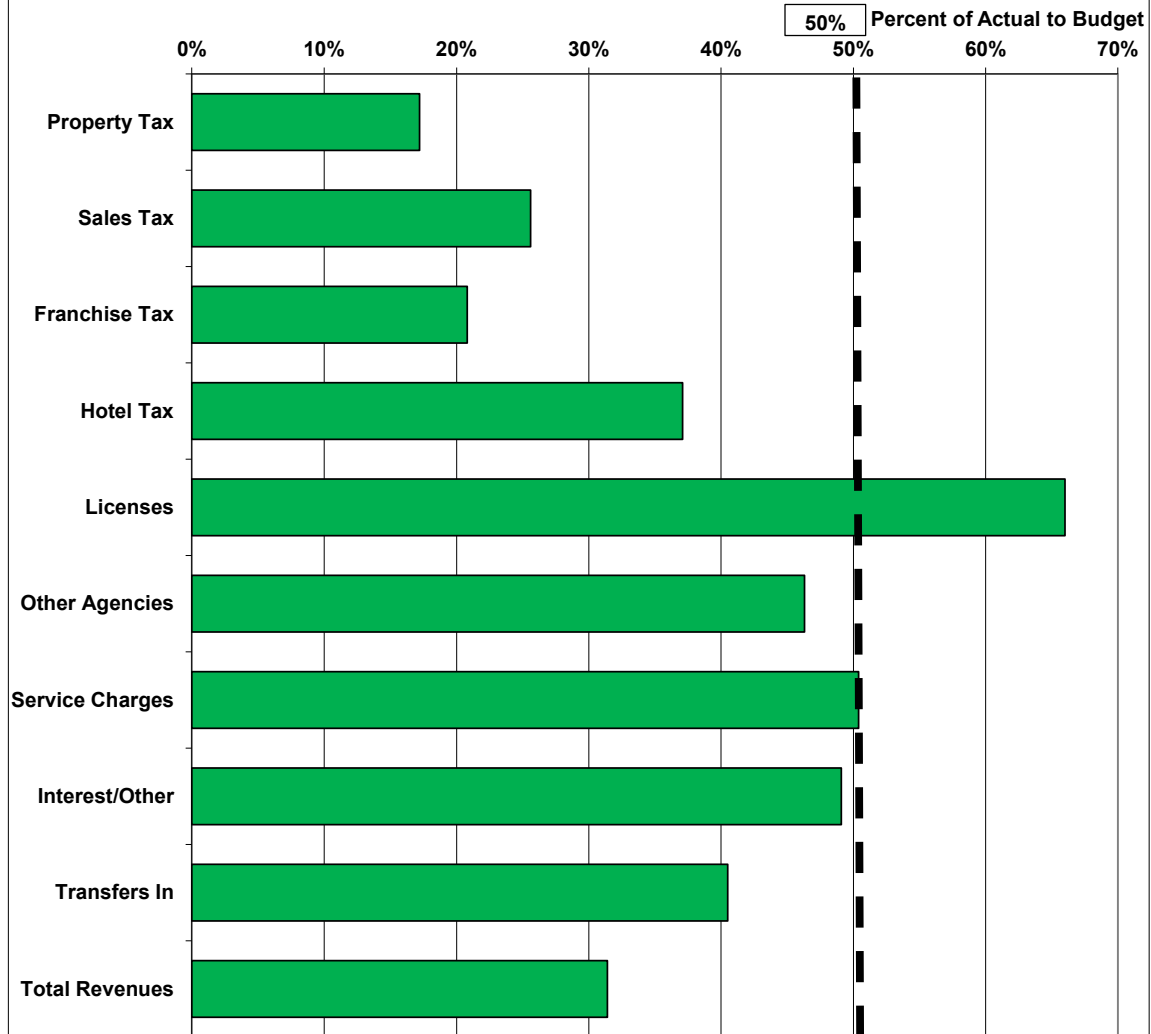
* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)

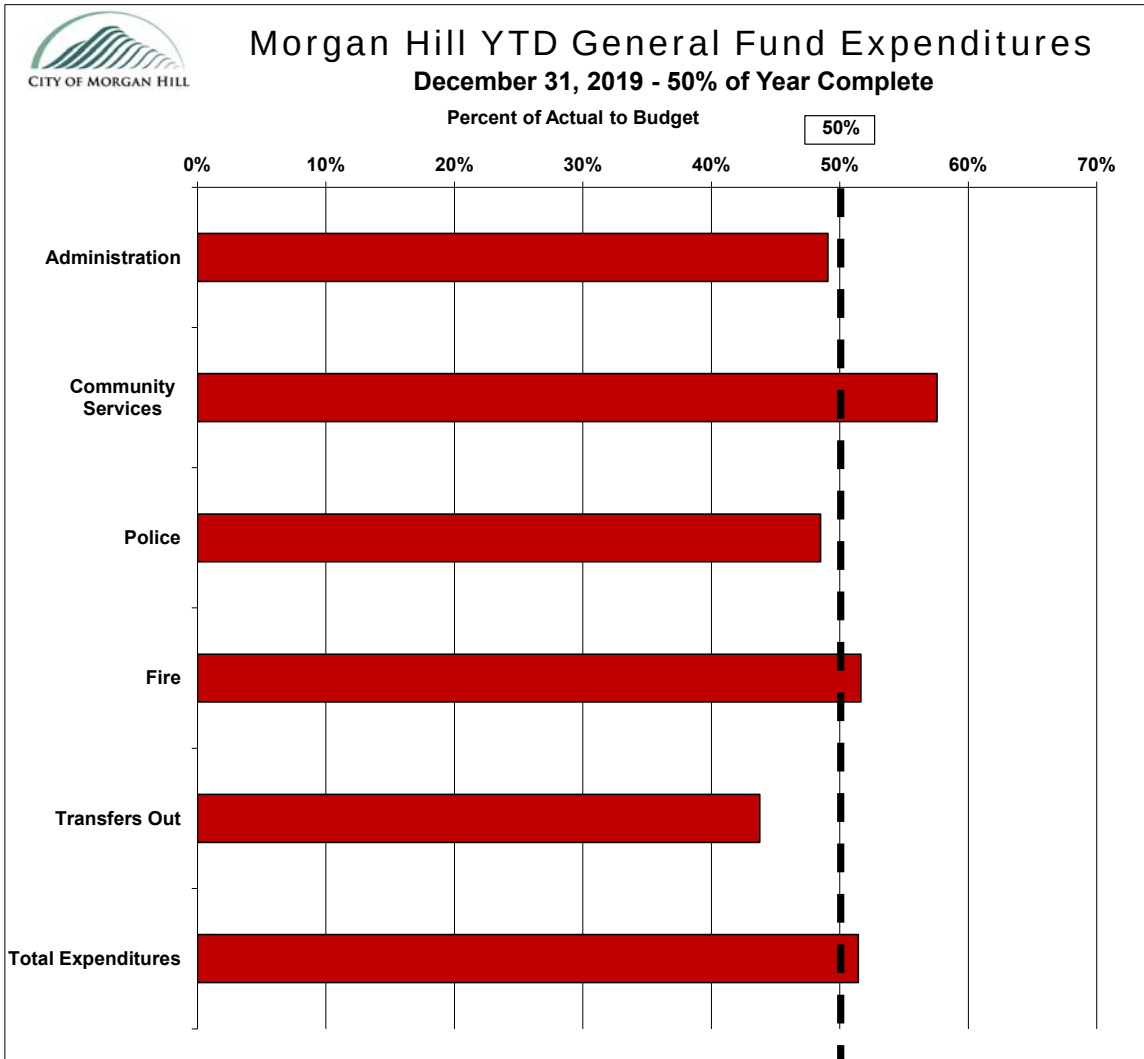


Morgan Hill YTD General Fund Revenues

December 31, 2019 - 50% of Year Complete



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 13,082,377	\$ 2,254,060	17%	\$ 2,197,074	3%
Sales Tax	10,476,000	2,680,740	26%	2,935,655	-9%
Franchise Tax	2,319,566	483,529	21%	487,140	-1%
Hotel Tax	3,080,880	1,141,835	37%	1,189,140	-4%
Licenses	206,940	136,490	66%	193,551	-29%
Other Agencies	403,389	186,682	46%	157,464	19%
Service Charges	10,267,724	5,180,048	50%	4,888,443	6%
Interest/Other	1,471,324	723,110	49%	771,051	-6%
Transfers In	1,847,658	748,253	41%	606,648	23%
TOTAL REVENUES	\$ 43,155,858	\$ 13,534,749	31%	\$ 13,426,165	1%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,835,112	\$ 2,372,345	49%	\$ 2,457,535	-3%
Community Services	12,689,427	7,307,024	58%	7,161,243	2%
Police	17,372,961	8,427,259	49%	8,181,143	3%
Fire	6,961,396	3,595,683	52%	3,337,725	8%
Transfers Out	2,142,463	937,998	44%	910,518	3%
TOTAL EXPENDITURES	\$ 44,001,359	\$ 22,640,309	51%	\$ 22,048,164	3%

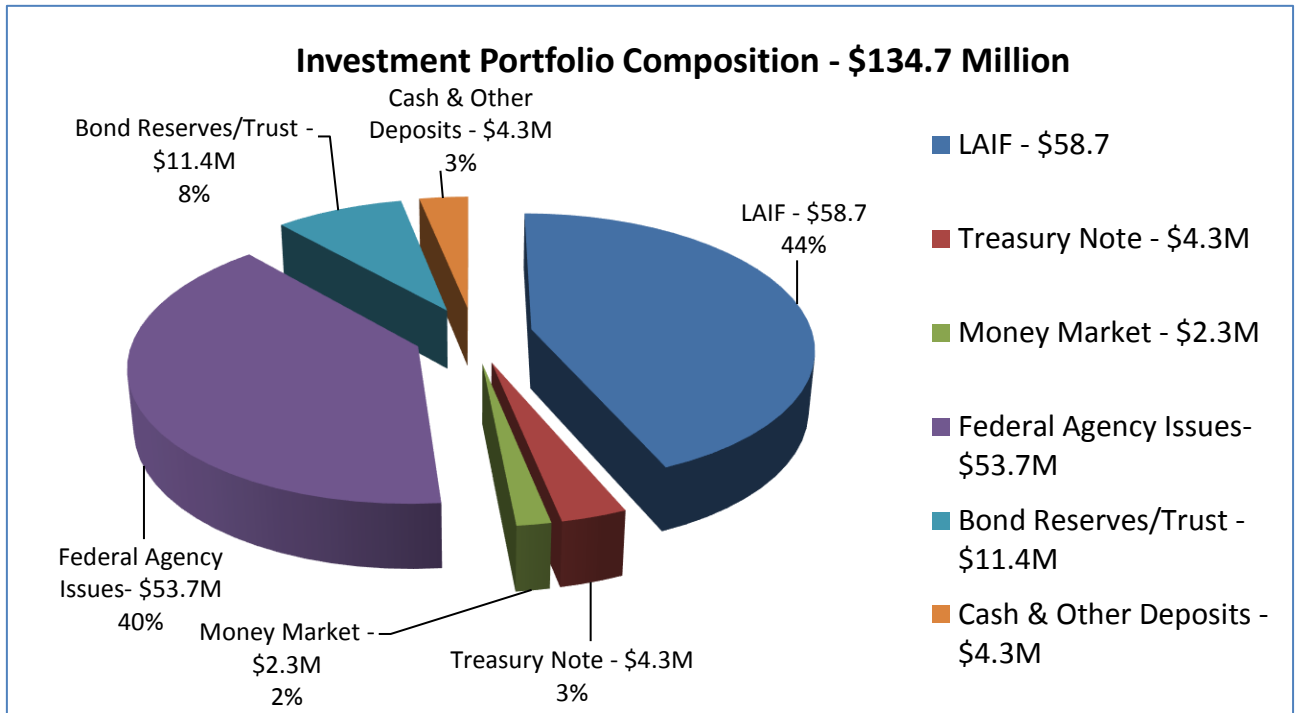


**City of Morgan Hill
Recreation Report - Fiscal Year 2019-20
For the Month and Six Months Ended December 31, 2019
50% of Year Complete**

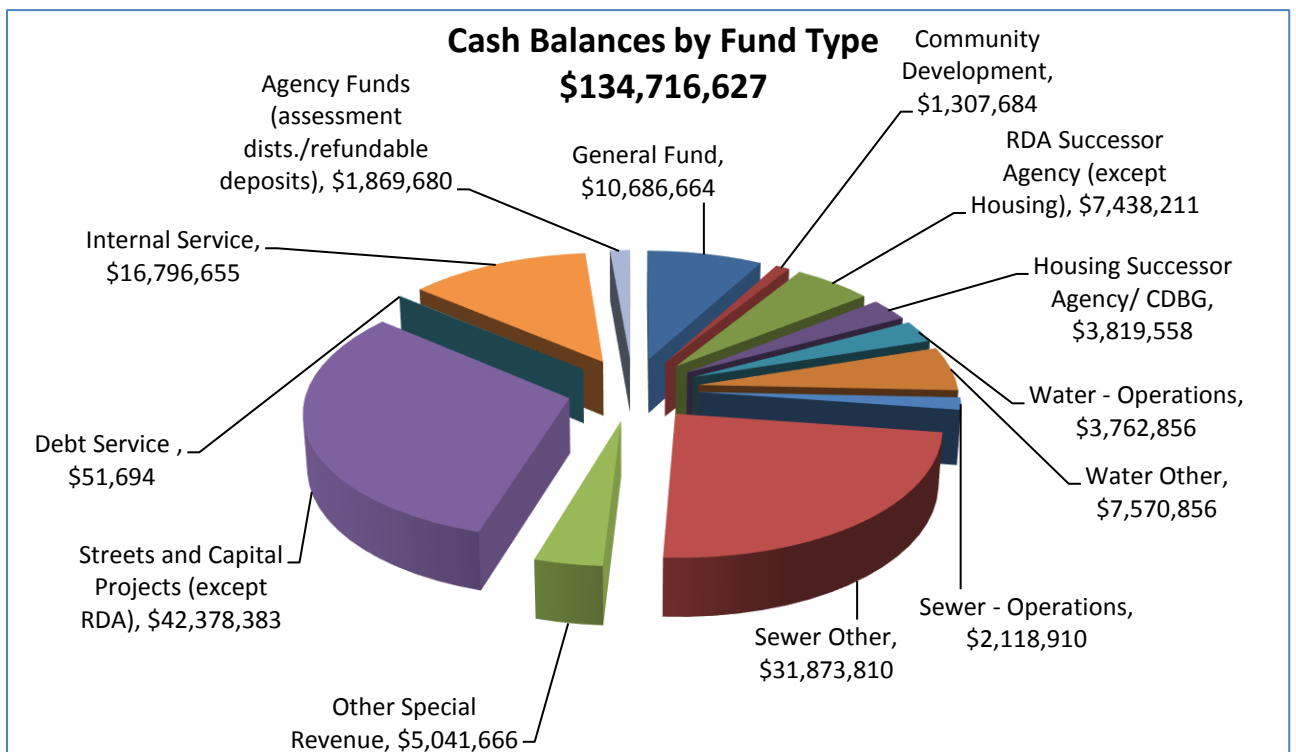
	<u>Budget</u>	<u>December 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,426,631	\$ 447,115	\$ 3,252,564	
Facility Rentals	915,330	81,451	502,407	
Community Services	149,705	8,079	26,528	
Transfers in	75,000	6,250	37,500	
Total Revenues	<u>\$ 7,566,666</u>	<u>\$ 542,894</u>	<u>\$ 3,819,000</u>	50%
Less: Expenditures				
Membership & Program Services	\$ 6,371,297	\$ 747,121	\$ 3,116,009	
Facility Rentals	1,356,318	116,288	663,304	
Community Services	648,407	66,997	302,922	
Total Expenditures	<u>\$ 8,376,023</u>	<u>\$ 930,405</u>	<u>\$ 4,082,236</u>	49%
Net Impact without encumbrances	<u>\$ (809,357)</u>	<u>\$ (387,511)</u>	<u>\$ (263,236)</u>	
Encumbrances	-	-	1,095,315	
Net Impact with encumbrances	<u>\$ (809,357)</u>	<u>\$ (387,511)</u>	<u>\$ (1,358,550)</u>	

City of Morgan Hill
Monthly Investment Report - December 31, 2019

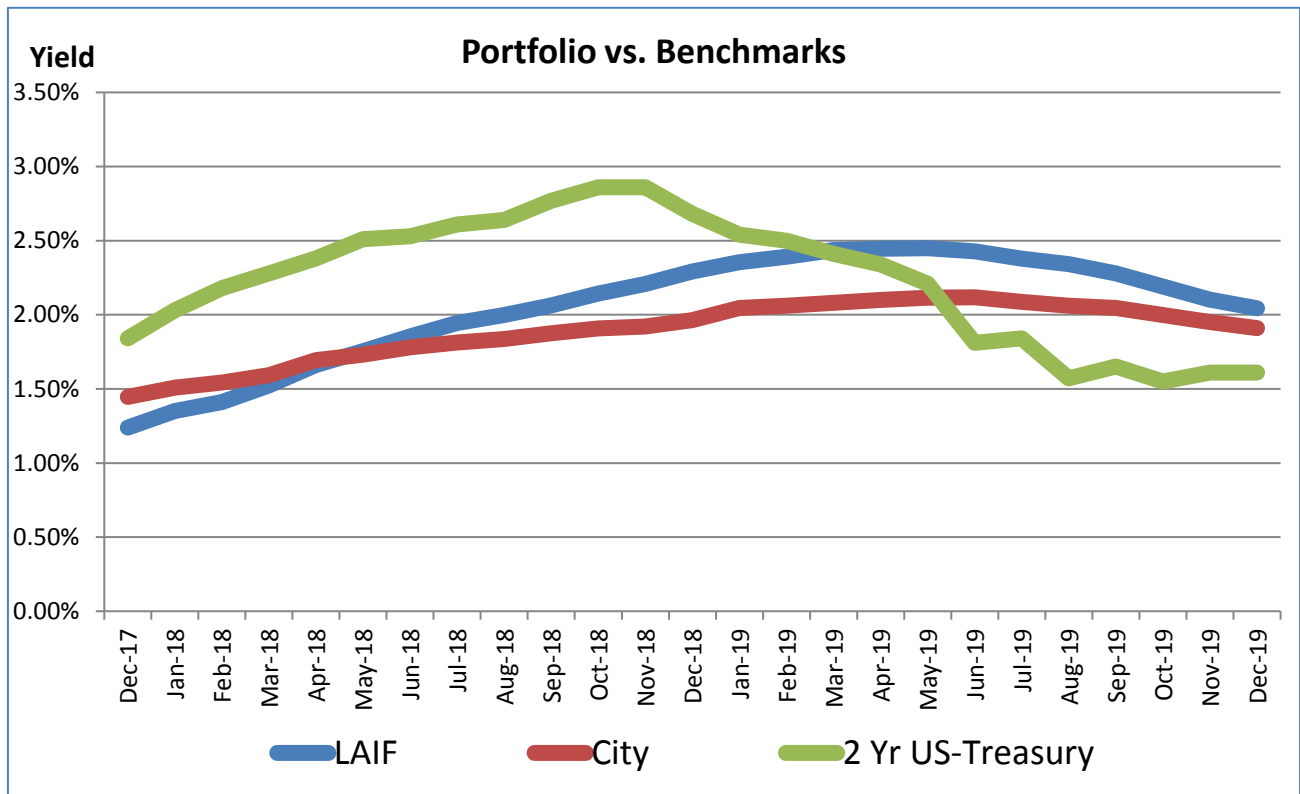
The following are the snapshots of City's investment portfolio as of December 31, 2019. The first chart shows the portfolio composition by investment type:



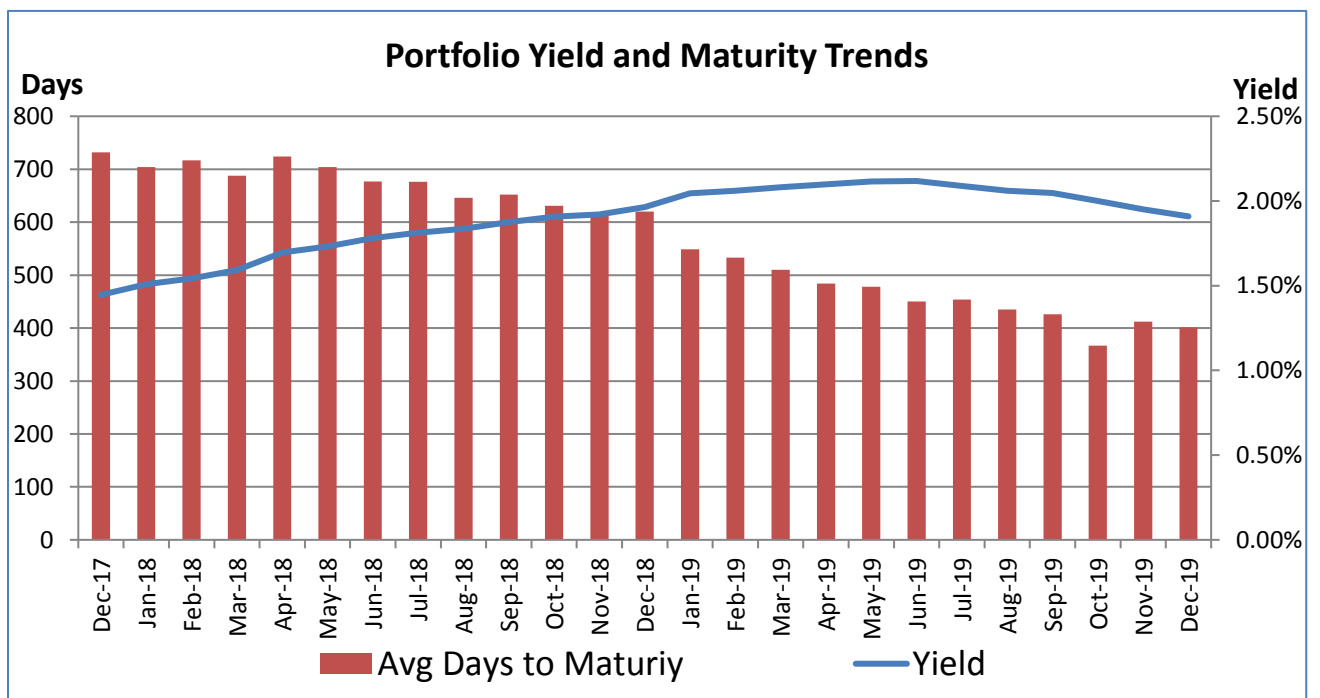
The chart below shows cash balances by fund type reconciled to City's financial system:



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 December 31, 2019

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 58,701,154	43.57%	\$ 58,797,589	2.04%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.97%	4,000,160	1.70%	10/19/2020	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.97%	3,981,920	1.50%	6/30/2020	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.97%	3,985,240	1.40%	8/25/2020	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.48%	1,996,120	1.65%	8/29/2020	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.97%	3,984,880	1.60%	9/29/2020	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.97%	3,989,280	1.60%	10/27/2020	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.97%	3,989,680	1.55%	10/28/2020	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.48%	1,995,480	1.65%	10/28/2020	10/28/2021
Fed Home Loan Mortgage	11/15/2016	4,000,000	2.97%	3,972,200	1.55%	10/15/2020	11/15/2021
Fed Home Loan Mortgage	11/23/2016	3,000,000	2.23%	2,993,640	1.65%	11/23/2020	11/23/2021
Fed Home Loan Mortgage	11/23/2016	4,000,000	2.97%	3,990,200	1.63%	11/23/2020	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.97%	4,000,600	1.88%	10/26/2020	11/26/2021
Treasury Note	4/30/2018	4,332,847	3.28%	4,483,665	2.73%	3/31/2023	3/31/2023
Fed Home Loan Mortgage	7/10/2019	3,000,000	2.23%	3,001,890	2.15%	7/2/2020	7/2/2024
Fed Farm Credit BKS	11/5/2019	3,000,000	2.23%	2,991,000	2.00%	11/5/2020	11/5/2024
Fed Farm Credit BKS	12/13/2019	2,998,515	2.23%	3,001,140	1.90%	12/27/2020	11/27/2024
Fed Home Loan Bank	9/26/2018	749,237	0.56%	751,433	2.80%	3/30/2020	3/30/2020
Fed Home Loan Mortgage	1/18/2019	999,735	0.74%	1,002,670	2.59%	4/23/2020	4/23/2020
Sub Total/Average		\$ 58,080,334	43.17%	\$ 58,111,198	1.80%		
Money Market		\$ 2,257,330	1.68%	\$ 2,257,330	1.48%		
Total City Managed/Average		\$ 119,038,818	88.42%	\$ 119,166,117	1.91%		
Bond Reserve Accounts - Held By Trustees		\$ 7,974,826	5.92%	\$ 7,974,826			
Cash/Deposits		\$ 4,315,579	3.20%	\$ 4,315,579			
PARS Trust		\$ 3,387,404	2.51%	\$ 3,900,721			
GRAND TOTAL/AVERAGE		\$ 134,716,627	100%	\$ 135,357,243			

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF DECEMBER 31, 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	2.04%	\$ 55,775,174	41.40%	\$ 55,866,802
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.04%	2,925,980	2.17%	2,930,787
Federal Issues	All Funds Pooled	1.69%	53,747,487	39.90%	53,627,533
US Treasury Notes	All Funds Pooled	2.73%	4,332,847	3.22%	4,483,665
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.48%	2,257,330	1.68%	2,257,330
	SUBTOTAL		\$ 119,038,818	88.36%	\$ 119,166,117
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	1.28%	199	0.00%	199
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.28%	254	0.00%	254
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.52%	7,452,894	5.53%	7,452,894
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.28%	257,137	0.19%	257,137
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.28%	264,341	0.20%	264,341
	SUBTOTAL		7,974,826	5.92%	7,974,826
Other Cash/Deposits					
General Checking	All Funds		4,278,467	3.18%	4,278,467
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			2,187,404	1.62%	2,544,221
PARS - PENSION Trust			1,200,000	0.89%	1,356,500
	SUBTOTAL		7,702,983	5.72%	8,216,300
Total Cash and Investments			\$ 134,716,627	100.00%	\$ 135,357,243

CASH ACTIVITY SUMMARY
FY 2019-20

Fund Type	07/1/19 Balance	Change in Cash Balance	12/31/2019 Balance
General Fund	\$ 15,044,885	\$ (4,358,222)	\$ 10,686,664
Community Development	3,419,872	(2,112,188)	1,307,684
RDA Successor Agency (except Housing)	12,277,198	(4,838,987)	7,438,211
Housing Successor Agency/ CDBG	4,150,303	(330,745)	3,819,558
Water - Operations	2,317,454	1,445,402	3,762,856
Water Other	4,954,819	2,616,037	7,570,856
Sewer - Operations	1,505,059	613,851	2,118,910
Sewer Other	29,212,866	2,660,943	31,873,810
Other Special Revenue	5,052,285	(10,619)	5,041,666
Streets and Capital Projects (except RDA)	42,155,711	222,672	42,378,383
Debt Service	253,454	(201,760)	51,694
Internal Service	12,991,987	3,804,667	16,796,655
Agency Funds (assessment dists./refundable deposits)	4,116,381	(2,246,701)	1,869,680
Total	\$ 137,452,276	\$ (2,735,649)	\$ 134,716,627

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 Six Months Ended December 31, 2019
50% 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	\$ 2,194,099	20%	\$ 2,075,218	\$ 118,881	6%
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	59,961	19%	48,101	11,860	25%
Sales Tax	10,091,000	10,091,000	2,556,645	25%	2,776,779	(220,134)	-8%
Public Safety Sales Tax	385,000	385,000	124,095	32%	158,877	(34,781)	-22%
Transient Occupancy Taxes	3,080,880	3,080,880	1,141,835	37%	1,189,140	(47,305)	-4%
Franchise (Refuse, Cable, PG&E)	2,319,566	2,319,566	483,529	21%	487,140	(3,611)	-1%
Property Transfer Tax	515,000	515,000	228,089	44%	233,738	(5,649)	-2%
TOTAL TAXES	29,473,823	29,473,823	6,788,253	23%	7,042,747	(254,494)	-4%
LICENSES/PERMITS							
Business License	202,000	202,000	131,069	65%	189,805	(58,736)	-31%
Other Permits	4,940	4,940	5,421	110%	3,746	1,675	45%
TOTAL LICENSES/PERMITS	206,940	206,940	136,490	66%	193,551	(57,061)	-29%
FINES AND PENALTIES							
Parking Enforcement	8,500	8,500	2,231	26%	4,641	(2,410)	-52%
Bails & Fines	73,645	73,645	22,676	31%	42,364	(19,688)	-46%
Administrative Citations	9,785	9,785	36,706	375%	729	35,977	4936%
TOTAL FINES AND PENALTIES	91,930	91,930	61,613	67%	47,733	13,880	29%
OTHER AGENCIES							
Motor Vehicle in-Lieu	24,652	24,652	-	n/a	-	-	n/a
Other Revenue - Other Agencies	403,389	403,389	186,682	46%	157,464	29,218	19%
TOTAL OTHER AGENCIES	428,041	428,041	186,682	44%	157,464	29,218	19%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,990	33,990	10,577	31%	23,978	(13,401)	-56%
Business License Application Review	36,000	36,000	21,510	60%	23,792	(2,282)	-10%
Membership Services & Rec Programs	6,426,631	6,426,631	3,252,564	51%	3,228,994	23,570	1%
Facility Rentals	915,330	915,330	502,407	55%	492,041	10,367	2%
Community Services	149,705	149,705	26,528	18%	34,838	(8,309)	-24%
General Administration Overhead	1,795,198	1,795,198	895,710	50%	853,056	42,654	5%
Other Charges Current Services	910,870	910,870	470,752	52%	231,745	239,007	103%
TOTAL CURRENT SERVICES	10,267,724	10,267,724	5,180,048	50%	4,888,443	291,606	6%
OTHER REVENUE							
Use of money/property	517,900	517,900	273,523	53%	207,458	66,065	32%
Other Revenues	311,842	321,842	159,885	50%	282,121	(122,236)	-43%
TOTAL OTHER REVENUE	829,742	839,742	433,408	52%	489,579	(56,171)	-11%
TRANSFERS IN							
One Time Transfer	180,000	180,000	89,994	50%	-	89,994	n/a
Public Safety	100,000	100,000	92,415	92%	48,809	43,605	89%
Fire Impact	-	25,000	25,000	100%	-	25,000	n/a
Streets	738,968	738,968	138,995	19%	158,460	(19,466)	-12%
Police Impact	25,000	25,000	12,498	50%	12,498	-	0%
Sewer Operations	351,845	351,845	175,926	50%	174,690	1,236	1%
Water Operations	351,845	351,845	175,926	50%	174,690	1,236	1%
Park Development	75,000	75,000	37,500	50%	37,500	-	0%
TOTAL TRANSFERS IN	1,822,658	1,847,658	748,253	40%	606,648	141,605	23%
TOTAL GENERAL FUND	43,120,858	43,155,858	13,534,749	31%	13,426,165	108,583	1%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	738,968	738,968	311,642	42%	297,070	14,573	5%
Interest / Other Revenue/Other Charges	-	-	1,052	n/a	1,124	(72)	-6%
202 STREET MAINTENANCE	738,968	738,968	312,694	42%	298,193	14,500	5%

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Six Months Ended December 31, 2019
50% 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	716	530%	465	251	54%
Police Grant/SLEF/JAG	100,000	100,000	80,948	81%	73,747	7,201	10%
205 PUBLIC SAFETY TRUST	100,135	100,135	81,664	82%	74,211	7,452	10%
206 DEVELOPMENT SERVICES							
Building Fees	3,275,864	3,275,864	1,651,161	50%	1,554,031	97,130	6%
Planning Fees	1,476,912	1,476,912	662,762	45%	502,709	160,053	32%
Engineering Fees	495,977	495,977	108,659	22%	258,067	(149,408)	-58%
Other Revenue/Current Charges	14,682	14,682	16,344	111%	25,757	(9,413)	-37%
206 DEVELOPMENT SERVICES	5,263,435	5,263,435	2,438,927	46%	2,340,564	98,362	4%
207 LONG RANGE PLANNING	736,371	736,371	373,975	51%	368,038	5,937	2%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,660	3,660	477	13%	457	21	5%
215 and 216 HCD BLOCK GRANT	3,660	3,660	477	13%	457	21	5%
225 ASSET SEIZURE	2,227	2,227	16,849	757%	32,335	(15,486)	-48%
229 LIGHTING AND LANDSCAPE	189,158	189,158	1,259	1%	1,052	207	20%
230 COMMUNITY FACILITIES DISTRICT	44,504	44,504	584	1%	10,571	(9,987)	-94%
232 ENVIRONMENTAL PROGRAMS	409,843	409,843	221,619	54%	223,083	(1,464)	-1%
234 MOBILE HOME PARK RENT STAB.	873	873	6,055	694%	8,865	(2,810)	-32%
235 SENIOR HOUSING	4,462	4,462	1,716	38%	1,562	154	10%
236 HOUSING MITIGATION	2,336,690	2,336,690	590,991	25%	711,090	(120,099)	-17%
240 EMPLOYEE ASSISTANCE	29,256	29,256	9,471	32%	11,160	(1,688)	-15%
247 ENVIRONMENT REMEDIATION	2,824	2,824	1,637	58%	949	688	73%
250 COMH-SUCCESSOR AGENCY-MHRDA	6,935,750	6,935,750	165,437	2%	865,533	(700,096)	-81%
255 HOUSING SUCCESSOR AGENCY	553,622	553,622	192,143	35%	37,783	154,361	409%
TOTAL SPECIAL REVENUE FUNDS	17,351,779	17,351,779	4,415,496	25%	4,985,445	(569,949)	-11%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	2,647,562	2,677,562	715,408	27%	1,155,838	(440,430)	-38%
302 PARK MAINTENANCE	1,371,696	1,371,696	204,509	15%	372,771	(168,262)	-45%
303 LOCAL DRAINAGE	1,652,576	1,652,576	471,638	29%	344,007	127,631	37%
304 LOCAL DRAINAGE/NON AB1600	83,498	83,498	11,705	14%	93,653	(81,949)	-88%
306 AGRICULTURE & OPEN SPACE PRESERVATION	3,420,324	3,420,324	655,459	19%	1,751,770	(1,096,310)	-63%
308 STREET CIP	5,068,938	5,068,938	2,376,852	47%	1,645,087	731,764	44%
309 TRAFFIC IMPACT	1,283,196	1,283,196	800,393	62%	1,430,940	(630,547)	-44%
311 POLICE IMPACT	295,109	295,109	131,609	45%	171,193	(39,584)	-23%
313 FIRE IMPACT	469,220	469,220	72,842	16%	179,773	(106,931)	-59%
346 PUBLIC FACILITIES NON-AB1600	630,420	630,420	104,942	17%	134,409	(29,467)	-22%
347 PUBLIC FACILITIES IMPACT	221,932	221,932	136,643	62%	117,831	18,812	16%
348 LIBRARY	936,224	936,224	258,627	28%	447,664	(189,037)	-42%
350 UNDERGROUNDING	50,079	50,079	6,467	13%	138,975	(132,508)	-95%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	656,864	656,864	20,431	3%	25,446	(5,015)	-20%
360 COMMUNITY/REC IMPACT FUND	1,359,693	1,359,693	455,803	34%	513,023	(57,220)	-11%
TOTAL CAPITAL PROJECTS FUNDS	20,147,331	20,177,331	6,423,330	32%	8,522,380	(2,099,050)	-25%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,874	301,874	150,805	50%	149,341	1,464	1%
441 POLICE FACILITY BOND	376,090	376,090	187,467	50%	187,364	103	0%
TOTAL DEBT SERVICE FUNDS	677,964	677,964	338,271	50%	336,705	1,567	0%

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Six Months Ended December 31, 2019
50% 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	4,675,595	40%	4,325,359	350,236	8%
Interest Income/Transfers	43,166	43,166	31,991	74%	13,729	18,262	133%
Other Revenue/Current Charges	328,660	328,660	124,204	38%	175,563	(51,359)	-29%
640 SEWER OPERATION	12,117,909	12,117,909	4,831,790	40%	4,514,651	317,139	7%
641 SEWER EXPANSION							
Interest Income	253,972	253,972	147,789	58%	121,752	26,037	21%
Development Impact Fee	4,801,041	4,801,041	2,695,978	56%	3,044,045	(348,067)	-11%
Transfers/Other	-	-	-	n/a	-	-	0%
641 SEWER EXPANSION	5,055,013	5,055,013	2,843,767	56%	3,165,797	(322,030)	-10%
642 SEWER RATE STABILIZATION	52,262	52,262	19,703	38%	17,942	1,760	10%
643 SEWER-CAPITAL PROJECT	2,853,531	2,853,531	1,470,879	52%	1,428,191	42,688	3%
TOTAL SEWER FUNDS	20,078,715	20,078,715	9,166,138	46%	9,126,582	39,557	0%
650 WATER OPERATION							
Water Sales	13,400,000	13,400,000	6,438,046	48%	5,910,975	527,071	9%
Meter Install & Service	125,500	125,500	7,754	6%	80,633	(72,879)	-90%
Transfers-In / Interest Income	478,039	478,039	241,517	51%	222,346	19,171	9%
Other Revenue/Current Charges	776,961	776,961	494,520	64%	551,291	(56,771)	-10%
650 WATER OPERATION	14,780,500	14,780,500	7,181,837	49%	6,765,245	416,592	6%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	73,821	73,821	19,385	26%	20,758	(1,373)	-7%
Development Impact Fee	1,452,925	1,452,925	660,168	45%	795,420	(135,252)	-17%
651 WATER EXPANSION	1,526,746	1,526,746	679,554	45%	816,178	(136,624)	-17%
652 Water Rate Stabilization	11,107	11,107	13,224	119%	3,839	9,386	245%
653 Water Capital Project	3,812,288	3,812,288	1,910,927	50%	1,304,517	606,410	46%
TOTAL WATER FUNDS	20,130,641	20,130,641	9,785,542	49%	8,889,778	895,764	10%
TOTAL ENTERPRISE FUNDS	40,209,356	40,209,356	18,951,680	47%	18,016,360	935,321	5%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,783,719	1,783,719	905,015	51%	944,552	(39,537)	-4%
740 BUILDING MAINTENANCE	3,258,548	3,258,548	1,608,898	49%	1,706,725	(97,827)	-6%
741 BUILDING REPLACEMENT	831,677	831,677	397,373	48%	382,060	15,313	4%
745 CIP ADMINISTRATION	1,871,909	1,871,909	761,274	41%	639,794	121,481	19%
760 UNEMPLOYMENT INSURANCE	2,898	2,898	1,050	36%	1,116	(66)	-6%
770 WORKERS COMPENSATION	800,422	800,422	398,074	50%	413,480	(15,406)	-4%
790 EQUIPMENT REPLACEMENT	1,052,269	1,119,217	594,287	53%	607,114	(12,827)	-2%
791 EMPLOYEE BENEFITS	1,229,852	1,229,852	395,079	32%	678,990	(283,911)	-42%
795 GENERAL LIABILITY INSURANCE	1,076,586	1,076,586	534,817	50%	509,375	25,442	5%
TOTAL INTERNAL SERVICE FUNDS	11,907,880	11,974,828	5,595,867	47%	5,883,206	(287,338)	-5%
TOTAL FOR ALL FUNDS	\$ 133,415,168	\$ 133,547,116	\$ 49,259,393	37%	\$ 51,170,260	\$ (1,910,867)	-4%

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2019-20
For the Month and Six Months Ended December 31, 2019
50% 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	\$ 28,008	\$ 336,684	\$ 212,714	\$ 25,000	\$ 237,714	71%	\$ 110
	CITY ATTORNEY	82,498	763,698	348,680	96,018	444,697	58%	310
	CITY MANAGER	42,282	580,167	223,454	-	223,454	39%	219
	HUMAN RESOURCES	70,354	751,908	344,345	-	344,345	46%	359
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	61,720	601,560	290,674	6,131	296,805	49%	289
	Elections	1,998	178,037	16,141	-	16,141	9%	19
	COUNCIL SVCS & RECORDS MGMT	63,717	779,597	306,816	6,131	312,946	40%	299
	FINANCE	137,211	1,623,059	790,892	18,297	809,189	50%	809
	TOTAL ADMINISTRATION	424,070	4,835,112	2,226,900	145,445	2,372,345	49%	2,109
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	747,121	6,371,297	3,116,009	964,648	4,080,657	64%	3,039
	Recreation Facility Rentals	116,288	1,356,318	663,304	21,920	685,224	51%	649
	Community Services	66,997	648,407	302,922	108,746	411,668	63%	279
	Environmental Services	19,790	293,918	108,324	-	108,324	37%	109
	Street Maintenance	211,724	2,386,836	946,563	222,903	1,169,466	49%	1,069
	Downtown Maintenance	32,705	321,475	157,837	50,075	207,912	65%	169
	Cable Television	2,132	22,594	10,786	-	10,786	48%	19
	COMMUNITY SERVICES	1,196,756	11,400,845	5,305,746	1,368,292	6,674,038	59%	5,299
	CODE COMPLIANCE	16,090	160,943	76,323	-	76,323	47%	79
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	26,484	318,537	129,610	-	129,610	41%	39
	ECONOMIC DEVELOPMENT PROGRAMS	53,783	809,102	323,043	104,010	427,053	53%	349
	TOTAL COMMUNITY SERVICES	1,293,113	12,689,427	5,834,722	1,472,302	7,307,024	58%	5,759
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	98,004	1,300,288	658,624	11,485	670,109	52%	639
	Field Operations	759,622	9,094,915	4,274,295	192,868	4,467,163	49%	3,659
	Support Services	200,146	2,318,572	1,108,491	7,500	1,115,991	48%	1,089
	Emergency Services/Haz Mat	17,624	195,641	90,234	-	90,234	46%	89
	Special Operations	236,718	2,747,543	1,226,599	-	1,226,599	45%	949
	Dispatch Services	160,644	1,716,002	857,163	-	857,163	50%	779
	POLICE	1,472,757	17,372,961	8,215,406	211,853	8,427,259	49%	7,179
	FIRE	493,232	6,961,396	3,505,764	89,919	3,595,683	52%	3,279
	TOTAL PUBLIC SAFETY	1,965,989	24,334,358	11,721,170	301,772	12,022,942	49%	10,459
IV. TRANSFERS								
	Other	156,333	2,142,463	937,998	-	937,998	44%	919
	TOTAL TRANSFERS	156,333	2,142,463	937,998	-	937,998	44%	919
	TOTAL GENERAL FUND	3,839,505	44,001,359	20,720,790	1,919,519	22,640,309	51%	19,219

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2019-20
For the Month and Six Months Ended December 31, 2019
50% 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	141,047	-	141,047	19%	16%
205	PUBLIC SAFETY/SUPP.LAW	572	106,863	95,847	-	95,847	90%	5%
206	DEVELOPMENT SERVICES FUND							
	Planning	179,349	2,516,024	1,035,959	67,631	1,103,590	44%	1,08%
	Building	178,145	1,998,366	1,016,757	223,164	1,239,921	62%	81%
	Engineering	106,437	1,469,242	686,757	272,496	959,253	65%	66%
206	DEVELOPMENT SERVICES FUND	463,930	5,983,632	2,739,473	563,291	3,302,764	55%	2,57%
207	LONG RANGE PLANNING	48,175	736,054	224,719	193,865	418,584	57%	29%
215/216	CDBG	434	5,209	2,604	-	2,604	50%	1%
229	LIGHTING AND LANDSCAPE	14,754	206,031	91,690	34,321	126,011	61%	9%
230	COMMUNITY FACILITIES DISTRICT	3,046	46,979	17,004	-	17,004	36%	1%
232	ENVIRONMENT PROGRAMS	36,093	439,095	202,887	21,962	224,849	51%	18%
234	MOBILE HOME PARK	35	425	210	-	210	49%	1%
236	HOUSING MITIGATION	(455,815)	2,285,207	686,862	150,799	837,661	37%	1,35%
240	EMPLOYEE ASSISTANCE	2,081	28,477	21,015	-	21,015	74%	1%
247	ENVIRONMENTAL REMEDIATION	170	-	1,354	-	1,354	n/a	1%
250	COMH-SUCCESSOR AGENCY-MHRDA	4,678	6,973,161	4,182,646	-	4,182,646	60%	5,89%
255	HOUSING SUCCESSOR AGENCY	37,493	935,845	457,266	328,158	785,424	84%	3,44%
TOTAL SPECIAL REVENUE FUNDS		155,987	18,490,050	8,864,624	1,292,397	10,157,020	55%	14,07%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	1,307,387	12,547,895	1,666,915	845,662	2,512,577	20%	17%
302	PARK MAINTENANCE	76,664	1,227,852	573,128	102,884	676,012	55%	53%
303	LOCAL DRAINAGE	54,761	2,924,734	149,939	357,492	507,431	17%	5%
304	LOCAL DRAIN. NON-AB1600	15,455	486,660	26,721	62,440	89,161	18%	1%
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,232	6,695,683	3,168,295	36,394	3,204,689	48%	2,34%
308	STREET CIP	40,241	8,456,398	3,561,314	1,188,567	4,749,881	56%	1,62%
309	TRAFFIC IMPACT	157,245	18,536,119	586,595	98,719	685,314	4%	4,61%
311	POLICE IMPACT	2,378	226,130	113,459	-	113,459	50%	11%
313	FIRE IMPACT	273	53,425	26,955	9,462	36,417	68%	2%
346	PUBLIC FAC.NON AB1600	2,275	930,930	84,952	38,706	123,658	13%	11%
347	PUBLIC FACILITIES IMPACT	7,941	177,688	83,876	22,223	106,099	60%	1%
348	LIBRARY IMPACT	219,627	3,849,389	588,715	1,837,517	2,426,232	63%	27%
350	UNDERGROUNDING	90	1,075	540	-	540	50%	1%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	9,958	2,190,266	218,609	19,568	238,176	11%	2%
360	COMM/REC CENTER IMPACT	302,505	3,441,478	385,349	2,529,124	2,914,473	85%	5%
TOTAL CAPITAL PROJECTS FUNDS		2,199,033	61,745,723	11,235,361	7,148,758	18,384,119	30%	9,97%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	839	311,636	227,814	-	227,814	73%	22%
441	POLICE FACILITY BOND DEBT	320	380,552	300,384	-	300,384	79%	29%
TOTAL DEBT SERVICE FUNDS		1,159	692,188	528,198	-	528,198	76%	51%

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Six Months Ended December 31, 2019
 50% 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	926,512	12,087,541	5,145,158	597,759	5,742,917	48%	4,871
641	SEWER CAPITAL EXPANSION	27,696	13,399,255	561,680	251,638	813,317	6%	711
642	SEWER RATE STABILIZATION	90	1,078	540	-	540	50%	-
643	SEWER-CAPITAL PROJECTS	630,069	10,335,505	2,848,691	2,446,105	5,294,796	51%	3,401
TOTAL SEWER FUND(S)		1,584,367	35,823,378	8,556,069	3,295,501	11,851,570	33%	8,991
WATER								
	Water Operations	1,053,153	14,203,740	6,835,289	1,368,941	8,204,230	58%	5,201
	Utility Billing	69,956	789,099	399,410	21,311	420,722	53%	371
	Water Conservation	5,389	198,464	30,735	97,549	128,284	65%	41
650	WATER OPERATIONS	1,128,498	15,191,302	7,265,434	1,487,801	8,753,236	58%	5,621
651	WATER CAPITAL EXPANSION	104,728	2,281,224	779,300	185,339	964,639	42%	1,141
652	WATER RATE STABILIZATION	29	352	174	-	174	49%	-
653	WATER-CAPITAL PROJECTS	5,458	3,731,255	374,850	58,015	432,865	12%	661
TOTAL WATER FUND(S)		1,238,713	21,204,133	8,419,759	1,731,155	10,150,914	48%	7,421
TOTAL ENTERPRISE FUNDS		2,823,080	57,027,512	16,975,827	5,026,657	22,002,484	39%	16,411
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	138,973	2,334,467	895,200	235,282	1,130,482	48%	721
740	BUILDING MAINTENANCE	196,332	3,338,819	1,407,922	304,660	1,712,581	51%	1,361
741	BUILDING REPLACEMENT	15,229	278,950	167,358	9,204	176,562	63%	221
745	CIP ADMINISTRATION	153,045	1,619,521	795,110	10,086	805,195	50%	631
760	UNEMPLOYMENT	-	10,000	7,029	-	7,029	70%	-
770	WORKERS COMPENSATION	14,624	952,045	779,885	-	779,885	82%	441
790	EQUIPMENT REPLACEMENT	5,190	1,213,015	35,066	425,309	460,374	38%	-
791	EMPLOYEE BENEFITS FUND	190,994	615,000	341,301	-	341,301	55%	631
795	GEN. LIABILITY INSURANCE	10,910	1,044,568	828,069	-	828,069	79%	771
TOTAL INTERNAL SERVICE FUNDS		725,296	11,406,384	5,256,941	984,539	6,241,480	55%	4,811
REPORT TOTAL		\$ 9,744,061	\$ 193,363,216	\$ 63,581,741	\$ 16,371,869	\$ 79,953,610	41%	\$ 65,011

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Six Months Ended December 31, 2019 50% of Year Complete										
Fund No.	Fund	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	\$ 17,924,089	\$ 13,534,749	31%	\$ 20,720,790	47%	\$ (7,186,042)	\$ 1,919,519	\$ 8,818,528	
TOTAL GENERAL FUND		\$ 17,924,089	\$ 13,534,749	31%	\$ 20,720,790	47%	\$ (7,186,042)	\$ 1,919,519	\$ 8,818,528	
202	STREET MAINTENANCE	37,376	\$ 312,694	42%	\$ 141,047	51%	\$ 171,647	\$ -	\$ 209,023	
205	PUBLIC SAFETY/SUPPL. LAW	93,997	81,664	82%	95,847	47%	(14,183)	-	79,814	
206	DEVELOPMENT SERVICES	1,329,077	2,438,927	46%	2,739,473	46%	(300,547)	563,291	465,239	
207	LONG RANGE PLANNING	1,248,188	373,975	51%	224,719	31%	149,256	193,865	1,203,579	
215 / 216	CDBG	57,072	477	13%	2,604	50%	(2,127)	-	54,945	
225	ASSET SEIZURE	130,210	16,849	757%	-	n/a	16,849	-	147,059	
229	LIGHTING AND LANDSCAPE	158,268	1,259	1%	91,690	45%	(90,431)	34,321	33,515	
230	COMMUNITY FACILITIES DISTRICT	112,366	584	1%	17,004	36%	(16,421)	-	95,965	
232	ENVIRONMENTAL PROGRAMS	335,097	221,619	54%	202,887	46%	18,733	21,962	331,868	
234	MOBILE HOME PK RENT STAB.	52,468	6,055	694%	210	49%	5,845	-	58,313	
235	SENIOR HOUSING	228,559	1,716	38%	-	n/a	1,716	-	230,275	
236	HOUSING MITIGATION	2,520,285	590,991	25%	686,862	30%	(95,871)	150,799	2,273,615	
240	EMPLOYEE ASSISTANCE	63,226	9,471	32%	21,015	74%	(11,544)	-	51,682	
247	ENVIRONMENT REMEDIATION	135,636	1,637	58%	1,354	n/a	282	-	135,918	
250	COMH-SUCCESSOR AGENCY-MHRDA	(500,829)	165,437	2%	4,182,646	60%	(4,017,210)	-	(4,518,039)	
255	HOUSING SUCCESSOR AGENCY	3,976,695	192,143	35%	457,266	49%	(265,123)	328,158	3,383,414	
260	PUBLIC ART	185	-	n/a	-	-	-	-	185	
TOTAL SPECIAL REVENUE FUNDS		\$ 9,977,896	\$ 4,415,496	25%	\$ 8,864,624	48%	\$ (4,449,128)	\$ 1,292,397	\$ 4,236,372	
301	PARK DEV. IMPACT FUND	4,116,066	\$ 715,408	27%	\$ 1,666,915	13%	\$ (951,507)	\$ 845,662	\$ 2,318,897	
302	PARK MAINTENANCE	4,078,868	204,509	15%	573,128	47%	(368,619)	102,884	3,607,365	
303	LOCAL DRAINAGE	12,117,049	471,638	29%	149,939	5%	321,699	357,492	12,081,256	
304	LOCAL DRAINAGE/NON-AB1600	1,563,382	11,705	14%	26,721	5%	(15,017)	62,440	1,485,926	
306	AGRICULTURE AND OPEN SPACE PRESERV	7,951,064	655,459	19%	3,168,295	47%	(2,512,836)	36,394	5,401,835	
308	STREET CIP	3,299,044	2,376,852	47%	3,561,314	42%	(1,184,462)	1,188,567	926,015	
309	TRAFFIC IMPACT FUND	(1,263,866)	800,393	62%	586,595	3%	213,798	98,719	(1,148,787)	
311	POLICE IMPACT FUND	(640,897)	131,609	45%	113,459	50%	18,150	-	(622,747)	
313	FIRE IMPACT FUND	3,873,198	72,842	16%	26,955	50%	45,886	9,462	3,909,622	
346	PUBLIC FACILITIES NON-AB1600	(178,488)	104,942	17%	84,952	9%	19,991	38,706	(197,203)	
347	PUBLIC FACILITIES IMPACT FUND	688,851	136,643	62%	83,876	47%	52,768	22,223	719,395	
348	LIBRARY IMPACT FUND	2,987,436	258,627	28%	588,715	15%	(330,088)	1,837,517	819,831	
350	UNDERGROUNDING	861,895	6,467	13%	540	50%	5,927	-	867,822	
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,477,523	20,431	3%	218,609	10%	(198,178)	19,568	1,259,778	
360	COMM/REC CTR IMPACT FUND	2,122,228	455,803	34%	385,349	11%	70,454	2,529,124	(336,441)	
TOTAL CAPITAL PROJECT FUNDS		\$ 43,053,353	\$ 6,423,330	32%	\$ 11,235,361	18%	\$ (4,812,032)	\$ 7,148,758	\$ 31,092,563	
420	CIVIC CENTER DEBT	171,351	\$ 150,805	50%	\$ 227,814	73%	\$ (77,009)	\$ 199	\$ 94,143	
441	POLICE FACILITY BOND DEBT	70,213	187,467	50%	300,384	79%	(112,917)	254	(42,958)	
TOTAL DEBT SERVICE FUNDS		\$ 241,564	\$ 338,271	50%	\$ 528,198	76%	\$ (189,926)	\$ 453	\$ 51,184	

Fund No.	Fund	City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Six Months Ended December 31, 2019 50% of Year Complete									
		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	\$ 3,235,529	\$ 4,831,790	40%	\$ 5,145,158	43%	\$ (313,368)	597,759	2,324,402
641	SEWER IMPACT FUND*	18,119,442	2,843,767	56%	561,680	4%	2,282,087	251,638	20,149,891
642	SEWER RATE STABILIZATION	2,625,280	19,703	38%	540	50%	19,163	-	2,644,443
643	SEWER-CAPITAL PROJECTS	9,791,525	1,470,879	52%	2,848,691	28%	(1,377,812)	2,446,105	5,967,608
650	WATER OPERATIONS	4,010,886	7,181,837	49%	7,265,434	48%	(83,597)	1,487,801	2,439,487
651	WATER IMPACT FUND*	2,507,584	679,554	45%	779,300	34%	(99,746)	185,339	2,222,498
652	WATER RATE STABILIZATION	1,761,549	13,224	119%	174	49%	13,050	-	1,774,599
653	WATER -CAPITAL PROJECT	1,685,295	1,910,927	50%	374,850	10%	1,536,077	58,015	3,163,357
TOTAL ENTERPRISE FUNDS		\$ 43,737,090	\$ 18,951,680	47%	\$ 16,975,827	30%	\$ 1,975,853	\$ 5,026,657	\$ 40,686,286

730	INFORMATION SERVICES	\$ 902,325	\$ 905,015	51%	\$ 895,200	38%	\$ 9,815	235,282	\$ 676,858
740	BUILDING MAINTENANCE	64,490	1,608,898	49%	1,407,922	42%	200,976	304,660	(39,194)
741	BUILDING REPLACEMENT	2,515,067	397,373	48%	167,358	60%	230,015	9,204	2,735,878
745	CIP ENGINEERING	62,517	761,274	41%	795,110	49%	(33,835)	10,086	18,596
760	UNEMPLOYMENT	142,515	1,050	36%	7,029	70%	(5,979)	-	136,536
770	WORKERS COMPENSATION	2,015,978	398,074	50%	779,885	82%	(381,811)	30,000	1,604,167
790	EQUIPMENT REPLACEMENT	5,238,985	594,287	53%	35,066	3%	559,221	425,309	5,372,898
791	EMPLOYEE BENEFITS FUNDS	(233,198)	395,079	32%	341,301	55%	53,778	-	(179,420)
795	GEN. LIABILITY INSURANCE	1,379,596	534,817	50%	828,069	79%	(293,253)	-	1,086,343
TOTAL INTERNAL SERVICE FUNDS		\$ 12,088,275	\$ 5,595,867	47%	\$ 5,256,941	46%	\$ 338,927	\$ 1,014,539	\$ 11,412,663

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 17,924,089	\$ 13,534,749	31%	\$ 20,720,790	47%	\$ (7,186,042)	\$ 1,919,519	\$ 8,818,528
SPECIAL REVENUE GROUP	9,977,896	4,415,496	25%	8,864,624	48%	(4,449,128)	1,292,397	4,236,372
DEBT SERVICE GROUP	241,564	338,271	50%	528,198	76%	(189,926)	453	51,184
CAPITAL PROJECTS GROUP	43,053,353	6,423,330	32%	11,235,361	18%	(4,812,032)	7,148,758	31,092,563
ENTERPRISE GROUP	43,737,090	18,951,680	47%	16,975,827	30%	1,975,853	5,026,657	40,686,286
INTERNAL SERVICE GROUP	12,088,275	5,595,867	47%	5,256,941	46%	338,927	1,014,539	11,412,663
TOTAL ALL GROUPS	\$ 127,022,269	\$ 49,259,393	37%	\$ 63,581,741	33%	\$ (14,322,348)	\$ 16,402,322	\$ 96,297,597

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 11/5/19 to 2/7/20**

Vendor Name	Description of Service	Begin Date	End Date	Department	Amount
Ruggeri-Jensen-Azar	Prepare Plans and Specifications for the 5th Street Sewer Main	11/19/2019	12/31/2020	CSD	\$54,400
Burke, Williams & Sorensen, LLP	Consultant Agreement for Legal Services for Housing	12/3/2019	6/30/2020	CAO	\$45,000
HydroScience Engineers, Inc	Potable Reuse Alternatives Evaluation Study-Condit Rd	12/19/2019	6/30/2020	CSD	\$27,000
Advent Group Ministries	Lease Agreement	1/16/2020	1/16/2025	CSD	\$50,000
Scharffenberger Land Planning & Design	Design & Implementation of Agricultural Lands Preservation Prog	1/16/2020	12/31/2023	CSD	\$50,000
Alarm Program Systems, LLC	False Alarm Management Program	1/16/2020	12/31/2023	PD	\$45,000
Akel Engineering Group, Inc	Fisher Butterfield Storm Drainage System Master Plan Amendment	11/8/2019	6/30/2020	CSD	\$40,000
NBS Government Finance Group	Formation of Morgan Hill Citywide Community Facilities District	11/8/2019	12/30/2020	FIN	\$25,000
Flexground Surfaces, Inc	CCC Splash Pad Project	12/26/2019	2/16/2020	CSD	\$41,953
Associated Engineering-Surveying Services	Morgan Hill Inclusive Playground/Magical Bridge Project	1/28/2020	12/31/2021	ENG	\$31,268

Attachment: December 2019 Financial and Investment Report (2648 : Accept December 2019 Financial and Investment Report)



2nd Quarter FY2019-20 Financial Report





General Fund

- Revenues are tracking slightly better than budget
- Key GF revenues:

Category	Budget	YTD Actual	Prior YTD
Property Tax	\$13,082,377	\$2,254,060	\$2,197,074
Sales Tax	10,476,000	2,680,740	2,935,655
Svc Charges	10,267,724	5,180,048	4,888,443
Hotel Tax	3,080,880	1,141,835	1,189,140

- Expenditures including encumbrances:

Total Exp	\$44,001,359	\$22,640,309	\$22,048,164
-----------	--------------	--------------	--------------



Development Services Fund

- Both revenues and expenditures are tracking within budget

Category	Budget	YTD Actual	Prior YTD
Revenues	\$5,263,435	\$2,438,927	\$2,340,564
Expenditures	5,983,632	3,302,764	3,795,920
Net	(\$720,197)	(\$863,837)	(\$1,455,356)



Enterprise Funds

- Wastewater Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$12,117,909	\$4,831,790	\$4,514,651
Expenditures	12,087,541	5,742,917	5,081,365
Net	\$30,368	(\$911,127)	(\$566,714)

- 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	\$7,181,837	\$6,765,245
Expenditures	15,191,302	8,753,236	6,805,876
Net	(\$410,802)	(\$1,571,399)	(\$40,631)

- Per City Council reserve policy – excess funds will be transferred to Water capital projects fund



CITY COUNCIL STAFF REPORT

MEETING DATE: February 19, 2020

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

CITY OF MORGAN HILL WEBSITE UPDATE

RECOMMENDATION(S)

Receive update on City of Morgan Hill website.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Community Engagement and Messaging

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

In the fall of 2019, the City of Morgan Hill completely refreshed, rebranded, and reorganized the City's website. As the City's core and foundational communication tool, it was important to ensure that the site was user friendly and easy to navigate, provided seamless access to information, and to make sure that the site is accessible.

The refreshed website, morganhill.ca.gov has been designed with a modern, yet warm and inviting style with authentic and active photography. The style is a dynamic site with clear core messages in a non-text heavy way. The tone of the website aims to achieve a balance between sophistication, down to earth and outdoorsy, and between informative and approachable. The features of the new website allow the user to easily navigate with their mobile devices.

The following analytics represent the period of time since going live in October 2019 to the end of January 2020 as compared to the same period the prior year:

October 1, 2019 – January 31, 2020

- 153,600 site visits
 - Of those visits 70,000 are from search engines; 56,000 are direct visits; 25,000 are from external transfers; and 2,600 are from social media transfers
 - 114,000 are from first time visitors
 - The average visitor is spending just under 2 minutes on our site and is visiting an average of 2.5 pages
 - 79,500 visitors access the site using the mobile device and 74,100 access the site using their computer

October 1, 2018 – January 31, 2019

- 132,060 site visits
 - Of those visits 68,570 are from search engines; 32,450 are direct visits; 29,600 are from external transfers; and 1,440 are from social media transfers
 - 88,334 are from first time visitors
 - The average visitor is spending just under 1.5 minutes on our site and is visiting an average of 2.5 pages
 - 61,060 visitors access the site using the mobile device and 71,000 access the site using their computer

What this information tells us is that more people are visiting our website, more people are going directly to our site, they are spending a little more time on our site, and that just about half of the people visiting the website do so on mobile devices. This information is important because it tells us where we need to be focusing our efforts on the website, that we need to be aware of how the information displays on mobile devices, what pages people find most useful, and what they are looking for. We can also glean from this information what pages are not being visited as much as we expected which tells us that we need to make adjustments on those pages.

The team will continue to review the analytics on the City's webpage to see where we can improve and how we can improve, ensuring that the public can access relevant information efficiently and effectively.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 2, 2019, the refreshed website was presented to the City Council and community.

FISCAL AND RESOURCE IMPACT:

No fiscal impact for this item. Funding for the website was approved in prior City Council actions.

CEQA (California Environmental Quality Act):

Not a Project: The creation of governmental funding mechanisms or other government activities that do not involve any commitment to any specific project that may result in physical environmental impacts is not a project under CEQA.



Regular Meeting Agenda

City Council

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

Wednesday, February 19, 2020 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

MORGAN HILL TENNIS CLUB- TONY BONTEMPI, PRESIDENT
VOTERS CHOICE PRESENTATION- SARA NICHOLSON, LEAGUE OF WOMEN VOTERS
YAC PRESENTATION- ASSET #26- CARING

CITY COUNCIL REPORTS

Mayor Pro Tem Martinez Beltran

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. STATUS REPORT ON BOYS AND GIRLS CLUBS OF SILICON VALLEY YOUTH PROGRAMMING AT PARK PLACE APARTMENTS

Recommendation:

Accept status report on Boys and Girls Clubs of Silicon Valley youth programming at Park Place Apartments.

2. ADOPT RESOLUTION SUPPORTING CONSIDERATION OF CUSTOMER OWNERSHIP IN PG&E RESTRUCTURING PROCESS

Recommendation:

Adopt resolution supporting the full consideration by the State Legislature, the California Public Utilities Commission, and the U.S. Bankruptcy Court of customer ownership in the PG&E restructuring.

3. APPROVE FIRST AMENDMENT TO WATERSMART SOFTWARE AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute the first amendment to WaterSmart's agreement to update an appendix to the agreement allowing for enhanced customer notifications.

4. APPROVE PACIFIC GAS AND ELECTRIC COMPANY AGREEMENT TO UNDERGROUND DRY UTILITIES FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a Pacific Gas and Electric Company Agreement to underground dry utilities at the intersection of Dewitt and Spring Avenues for the Hale Avenue Extension Project for a not to exceed amount of \$157,883.

5. APPROVE FUNDING AGREEMENT AND BUDGET AMENDMENT FOR MADRONE CHANNEL TRAIL IMPROVEMENTS PROJECT GRANT

Recommendation:

1. Approve and authorize the City Manager to execute and administer the Santa Clara Valley Transportation Authority's funding agreement for the Bay Area Air Quality Management District Transportation for Clean Air Program (TFCA) grant program for up to \$33,400 towards the construction of the Madrone Channel Trail Improvements Project; and
2. Adopt resolution amending the adopted Fiscal Year (FY) 2019-20 budget in Park Impact Fees Fund (301) to recognize the TFCA Grant as revenue.

6. APPROVE PURCHASE OF A NEW SCHOOL RESOURCE OFFICER VEHICLE

Recommendation:

1. Approve the purchase and build-out of a 2020 Ford Explorer for the Police Department's School Resource Officer; and
2. Authorize the City Manager to approve the purchase order with Priority 1 Public Safety Equipment Installation, Inc. in the not to exceed amount of \$67,000.

7. AWARD CONTRACTS FOR ON-CALL EMERGENCY SPILL RESPONSE CLEANUP SERVICES

Recommendation:

1. Determine that competitive bids upon notice would not be likely to result in a lower price to the City from a responsible bidder or would cause unnecessary expense or delay under the circumstances pursuant to Morgan Hill Municipal Code 3.04.150 (1);
2. Award consultant agreements to All Clean Hazardous Waste Removal, Inc. ("All Clean") and Disaster Kleenup Specialists ("Disaster Kleenup") for emergency spill response cleanup services for three years with the option to extend the term of the agreements for an additional year; and
3. Authorize the City Manager to execute the agreements and other related documents for a three-year term not to exceed \$100,000 and authorize the City Manager to extend the term of the agreements for an additional year.

8. RATIFY CITY POSITION ON CALIFORNIA HOUSING BILL SB 50

Recommendation:

1. Receive legislative correspondence in opposition of Senate Bill (SB) 50 (Wiener) Planning and Zoning: Housing Development: Streamlined Approval: Incentives; and
2. Ratify City's position.

PUBLIC HEARING

9. ADOPTION OF RESOLUTION OF INTENTION AND INTRODUCTION OF ORDINANCE TO AMEND THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) AND THE CITY OF MORGAN HILL TO IMPLEMENT THE EMPLOYEE SHARE OF EMPLOYER CONTRIBUTION IN ACCORDANCE WITH SECTION 20516 OF THE CALIFORNIA GOVERNMENT CODE

Recommendation:

1. Adopt Resolution of Intention of the City Council of the City of Morgan Hill stating its intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Morgan Hill in order to implement the pension cost share provision in accordance with California Government Code section 20516;
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance amending the City's contract with CalPERS; and
4. Introduce ordinance.

Estimated Time: 10 Minutes

OTHER BUSINESS

10. ACCEPT DECEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

11. CITY OF MORGAN HILL WEBSITE UPDATE

Recommendation:

Receive update on City of Morgan Hill website.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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





February

Developmental Asset #26

Caring

Young person places high values
on helping other people.

How to apply this asset?

- Small acts of kindness
- Take the time to learn about other people's backgrounds
- Community service
- Talking with each other



Benefits of being caring

- People are viewed as trustworthy
- Individuals feel appreciated
- Leadership qualities
- Creates a welcoming environment





February Complementary Asset number #38 Self-Esteem

Young person reports having a high self-esteem.

Relation and importance

- When you are kind to others, you can feel good about yourself
- When others compliment you, you feel better about yourself
- You're more likely to succeed in reaching your goals



**How has maintaining a caring attitude
in your community impacted
yourself and others?**



Handout
2/19/2020

Morgan Hill City Council Meeting Feb. 19th. 2020

COLLABORATION BETWEEN CITY OF MORGAN HILL and the MORGAN HILL TENNIS CLUB

CLUB HISTORY:

Morgan Hill Tennis Club was founded in 2008. In collaboration with the City of Morgan Hill, Community Park tennis courts have become a shining example of public and city collaboration. With the hard work and dedication of local volunteers, the Community Park tennis facility has become a real asset to the City of Morgan Hill. Since 2008, the M.H.T.C. and the City of M.H. have enjoyed a mutually beneficial partnership, that has resulted in outstanding adult and junior tennis programs, with not only approximately 1,000 club members, but thousands of visitors from other local Bay Area clubs. The quality of the courts and the enjoyment of the community, is of the utmost importance to the club, and represents the City of Morgan Hill as a whole.

TENNIS COURT FACILITY IMPROVEMENTS/PROJECTS PAID FOR BY MHTC:

1. Paid for/installed 2 large shade structures/patios, including concrete hardscape and retaining walls for public viewing.
2. Paid for/installed 14 benches on all courts and put in bleachers for viewing.
3. Paid for/installed 12 shade awnings/canopies on all 8 courts.
4. Paid for/installed a public bulletin board with court reservation and tennis related activities info.
5. Paid for/installed game score keepers, trash cans and ball caddies on all courts.
6. Paid for/installed a sand barrier to prevent sand coming from the softball field.
7. Paid for/installed a gate on court 4 for easy access to restrooms during matches.
8. Marked junior tennis (10 and under) lines on courts for junior tennis.
9. Planted 40 bushes around the entrance to the courts.
10. Lobbied for and collaborated with the city to make courts 7 & 8 safe from incoming softballs by installing netting.

All total in excess of \$50,000 has been spent by the club for these projects

In addition, we regularly maintain the courts by washing them, installing/fixing windscreens, installing nets/net straps, watering/weeding the landscape, emptying trash-cans and general upkeep. Also, M.H.T.C. officers and members donate thousands of work hours per year. We love our club!

Respectfully

Anthony Bontempi, President Morgan Hill Tennis Club. Board members; Pravin Lathigura, Edward Taylor, Eileen Bontempi, Mike Hansen, Ken Marques, Rachel Banske, Ben Bejarin, Paul Nguyen and Marie Cloughessy.













Congratulations!!!

Morgan Hill Tennis Club
for 10 Years of Service to the
Community



Tony & Eileen
Bontempi



Edward & Chere
Taylor





Tennis Court Rules of Conduct
Users playing tennis in City Parks must adhere to the following rules and regulations. Violations may result in fines or suspension of tennis privileges.
1. Users must be at least 12 years old to play tennis in City Parks.
2. Users must wear proper tennis attire, including a shirt, shorts, and tennis shoes.
3. Users must not use profanity or engage in abusive behavior.
4. Users must not use the courts for other activities, such as basketball or soccer.
5. Users must not leave equipment or trash on the courts.
6. Users must not enter the courts after sunset or before sunrise.
7. Users must not enter the courts if it is raining or if the courts are closed for maintenance.
8. Users must not enter the courts if they are under the influence of alcohol or drugs.
9. Users must not enter the courts if they are alone.
10. Users must not enter the courts if they are not properly supervised.
11. Users must not enter the courts if they are not properly instructed.
12. Users must not enter the courts if they are not properly equipped.
13. Users must not enter the courts if they are not properly prepared.
14. Users must not enter the courts if they are not properly motivated.
15. Users must not enter the courts if they are not properly conditioned.
16. Users must not enter the courts if they are not properly warmed up.
17. Users must not enter the courts if they are not properly hydrated.
18. Users must not enter the courts if they are not properly rested.
19. Users must not enter the courts if they are not properly focused.
20. Users must not enter the courts if they are not properly motivated.

NO ALCOHOL OR DRUGS

NO ALCOHOL OR DRUGS

Handout
2/19/2020

Morgan Hill City Council Meeting Feb. 19th. 2020

COLLABORATION BETWEEN CITY OF MORGAN HILL and the MORGAN HILL TENNIS CLUB

CLUB HISTORY:

Morgan Hill Tennis Club was founded in 2008. In collaboration with the City of Morgan Hill, Community Park tennis courts have become a shining example of public and city collaboration. With the hard work and dedication of local volunteers, the Community Park tennis facility has become a real asset to the City of Morgan Hill. Since 2008, the M.H.T.C. and the City of M.H. have enjoyed a mutually beneficial partnership, that has resulted in outstanding adult and junior tennis programs, with not only approximately 1,000 club members, but thousands of visitors from other local Bay Area clubs. The quality of the courts and the enjoyment of the community, is of the utmost importance to the club, and represents the City of Morgan Hill as a whole.

TENNIS COURT FACILITY IMPROVEMENTS/PROJECTS PAID FOR BY MHTC:

1. Paid for/installed 2 large shade structures/patios, including concrete hardscape and retaining walls for public viewing.
2. Paid for/installed 14 benches on all courts and put in bleachers for viewing.
3. Paid for/installed 12 shade awnings/canopies on all 8 courts.
4. Paid for/installed a public bulletin board with court reservation and tennis related activities info.
5. Paid for/installed game score keepers, trash cans and ball caddies on all courts.
6. Paid for/installed a sand barrier to prevent sand coming from the softball field.
7. Paid for/installed a gate on court 4 for easy access to restrooms during matches.
8. Marked junior tennis (10 and under) lines on courts for junior tennis.
9. Planted 40 bushes around the entrance to the courts.
10. Lobbied for and collaborated with the city to make courts 7 & 8 safe from incoming softballs by installing netting.

All total in excess of \$50,000 has been spent by the club for these projects

In addition, we regularly maintain the courts by washing them, installing/fixing windscreens, installing nets/net straps, watering/weeding the landscape, emptying trash-cans and general upkeep. Also, M.H.T.C. officers and members donate thousands of work hours per year. We love our club!

Respectfully

Anthony Bontempi, President Morgan Hill Tennis Club. Board members; Pravin Lathigura, Edward Taylor, Eileen Bontempi, Mike Hansen, Ken Marques, Rachel Banske, Ben Bejarin, Paul Nguyen and Marie Cloughessy.



February

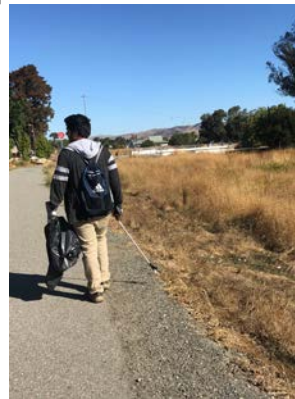
Developmental Asset #26

Caring

Young person places high values
on helping other people.

How to apply this asset?

- Small acts of kindness
- Take the time to learn about other people's backgrounds
- Community service
- Talking with each other



Benefits of being caring

- People are viewed as trustworthy
- Individuals feel appreciated
- Leadership qualities
- Creates a welcoming environment





February Complementary Asset number #38 Self-Esteem

Young person reports having a high self-esteem.

Relation and importance

- When you are kind to others, you can feel good about yourself
- When others compliment you, you feel better about yourself
- You're more likely to succeed in reaching your goals



**How has maintaining a caring attitude
in your community impacted
yourself and others?**

