



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, March 4, 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

Aquatics Foundation Donation
Tim Thornton, Brian Kennedy, Denean Smith and Matt Kennedy

RECOGNITIONS

Edward Boss Prado Foundation- Magical Bridge Inclusive Playground Donation
Cecelia Ponzini

CITY COUNCIL REPORTS

Council Member McKay

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. ACCEPT JANUARY 2020 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

2. ACCEPT DONATION FROM EDWARD BOSS PRADO FOUNDATION FOR MORGAN HILL MAGICAL BRIDGE INCLUSIVE PLAYGROUND

Recommendation:

1. Accept a donation of \$70,000 from the Edward Boss Prado Foundation for construction and maintenance of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

3. APPROVE COMMUNITY GARDEN LICENSE AGREEMENT WITH MORGAN HILL COMMUNITY GARDEN (MHCG)

Recommendation:

Authorize the City Manager to execute and administer the license agreement establishing an initial five-year agreement and to extend the agreement in the future if desired by both the City and Morgan Hill Community Garden.

4. APPROVAL OF A CONSULTANT AGREEMENT WITH LISA WISE CONSULTING, INC. (LWC) FOR PREPARATION OF THE MONTEREY CORRIDOR FORM-BASED CODE

Recommendation:

1. Adopt resolution amending the City's Fiscal Year 2019-20 budget to recognize \$160,000 as Senate Bill 2 – Building Homes and Jobs Act planning grant revenue and appropriate \$170,720 as expenditure in the Long-Range Planning Fund (207) for preparation of the Monterey Corridor Form-Based Code; and
2. Approve and authorize the City Manager to execute and administer a Consultant Agreement with Lisa Wise Consulting, Inc. (LWC) for a not to exceed amount of \$170,720.

5. APPROVAL OF A CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR)

Recommendation:

Approve and authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. for preparation of the Annexation Environmental Impact Report.

6. APPROVE BUTTERFIELD VILLAGE - SUTTER BOULEVARD EXTENSION IMPROVEMENT AGREEMENT

Recommendation:

Approve and authorize the City Manager to executive and administer the Butterfield Village – Sutter Boulevard Extension Improvement Agreement with JTJ Morgan Hill RE LLC.

7. PURCHASE OF TWELVE CITY TRUCKS

Recommendation:

1. Approve the purchase of twelve (12) City trucks in the amount of \$587,634;
2. Authorize City Manager to approve purchase order in the amount of \$587,634 with National Auto Fleet Group;
3. Declare vehicles W06165, W10167, W07129, S07158, E08153, E08156, R08102, R11120, R08118, R07150, D08121, and D08100 to be surplus; and
4. Authorize the disposal of the surplus vehicles in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

8. AWARD MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT

Recommendation:

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to recognize \$338,260 as grant revenue and appropriate an additional \$376,959 in the Park Impact Fund (301), for the Madrone Channel Trail Improvements Project;
2. Approve the Madrone Channel Trail Improvements Phase I Project Plans and Specifications;
3. Award contract to Terramark General Engineering Contractors, Inc. for the Madrone Channel Trail Improvements Phase I Project in the amount of \$254,400;
4. Authorize expenditure of construction contingency funds not to exceed \$25,440; and
5. Authorize the City Manager to execute and administer the construction contract with Terramark General Engineering Contractors, Inc.

9. ADOPT ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Recommendation:

Waive the reading, adopt Ordinance No. 2316, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

10. APPROVE THE FEBRUARY 5, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

11. APPROVE THE FEBRUARY 19, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

12. RECEIVE REPORT FROM VALLEY WATER ON ANDERSON DAM AND CONSIDER CITY POSITION ON AB 3005 EXPEDITED DAM SAFETY FOR SILICON VALLEY ACT

Recommendation:

1. Receive verbal report from Valley Water on Anderson Dam;
2. Consider supporting AB 3005 (R. Rivas) Expedited Dam Safety for Silicon Valley Act; and
3. Direct staff to submit letter in support of AB 3005 to the appropriate representatives.

Estimated Time: 60 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 and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- 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

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Engagement and Messaging
- Economic Development
- Transportation





CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: No

ACCEPT JANUARY 2020 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging
Financial Sustainability

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 seven months ended January 31, 2020. Overall, the City received 53% of the budgeted revenues or \$70.6 million. Expenditures, including encumbrances totaled \$88.0 million or 46% of the budget. General Fund revenues through seven months totaled \$21.6 million or 50% of the budget, an increase of approximately \$0.5 million or 2% from prior year to date led by an increase in property tax. General fund expenditures, including encumbrances, amounted to \$26.6 million through January 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:

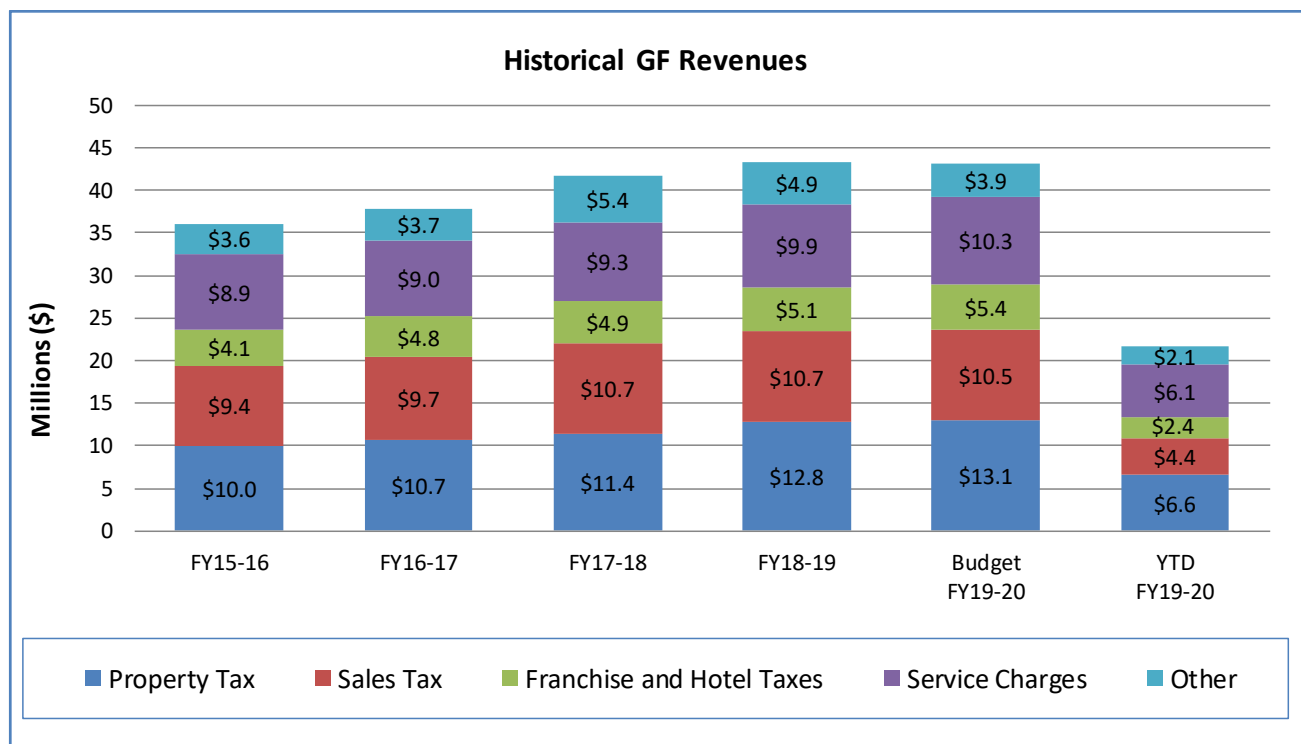
1. January 2020 Financial Statement Analysis
2. January 2020 Financial and Investment Report



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED JANUARY 2020 – 58% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of January totaled \$21.6 million, or 50% 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 \$14.1 million for the fiscal year 2019-20. The current projection is approximately \$1 million 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 January 31, 2020.

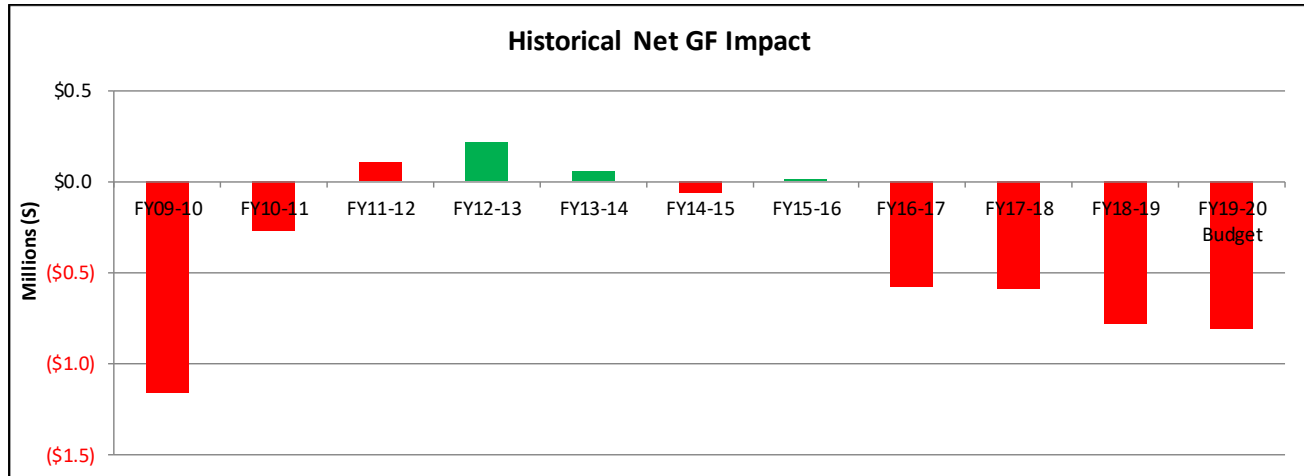


General Fund expenditures and encumbrances as of January 31, 2020 totaled \$26.6 million, of which approximately \$1.8 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED JANUARY 2020 – 58% 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 \$1.3 million through the month of January. Without the carry-over encumbrances, through the month of January operations resulted in a smaller negative impact to the general fund of approximately \$170,000. 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 January totaled \$2.9 million, a slight improvement from prior year to date. Expenditures, including encumbrances, totaled \$3.9 million. Without the outstanding encumbrances, however, expenditures through the month of January amounted to \$3.2 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 January 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 JANUARY 2020 – 58% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through the month of January totaled \$6.3 million. Expenditures and outstanding encumbrances totaled \$6.7 million or approximately 55% 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 January 31, 2020.

(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	6.3
Expenditures	12.0	9.8	10.8	11.4	12.1	6.7
Operating Margin	(1.8)	(0.1)	(0.5)	-	-	(0.4)
Operating Margin without Encumbrances	(1.8)	(0.0)	(0.3)	0.4	-	0.2

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of January totaled \$8.2 million. Water Operations expenditures, including outstanding encumbrances, totaled \$9.9 million for the year. Without the encumbrances, however, the expenditures amounted to \$8.4 million. The table below shows Water Operations revenues and expenditures from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of January 31, 2020.

(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	8.2
Expenditures	9.7	11.2	12.1	14.3	15.2	9.9
Operating Margin	(1.2)	(0.3)	0.9	(0.1)	(0.4)	(1.7)
Operating Margin without Encumbrances	(1.2)	(0.1)	1.4	0.8	(0.4)	(0.2)

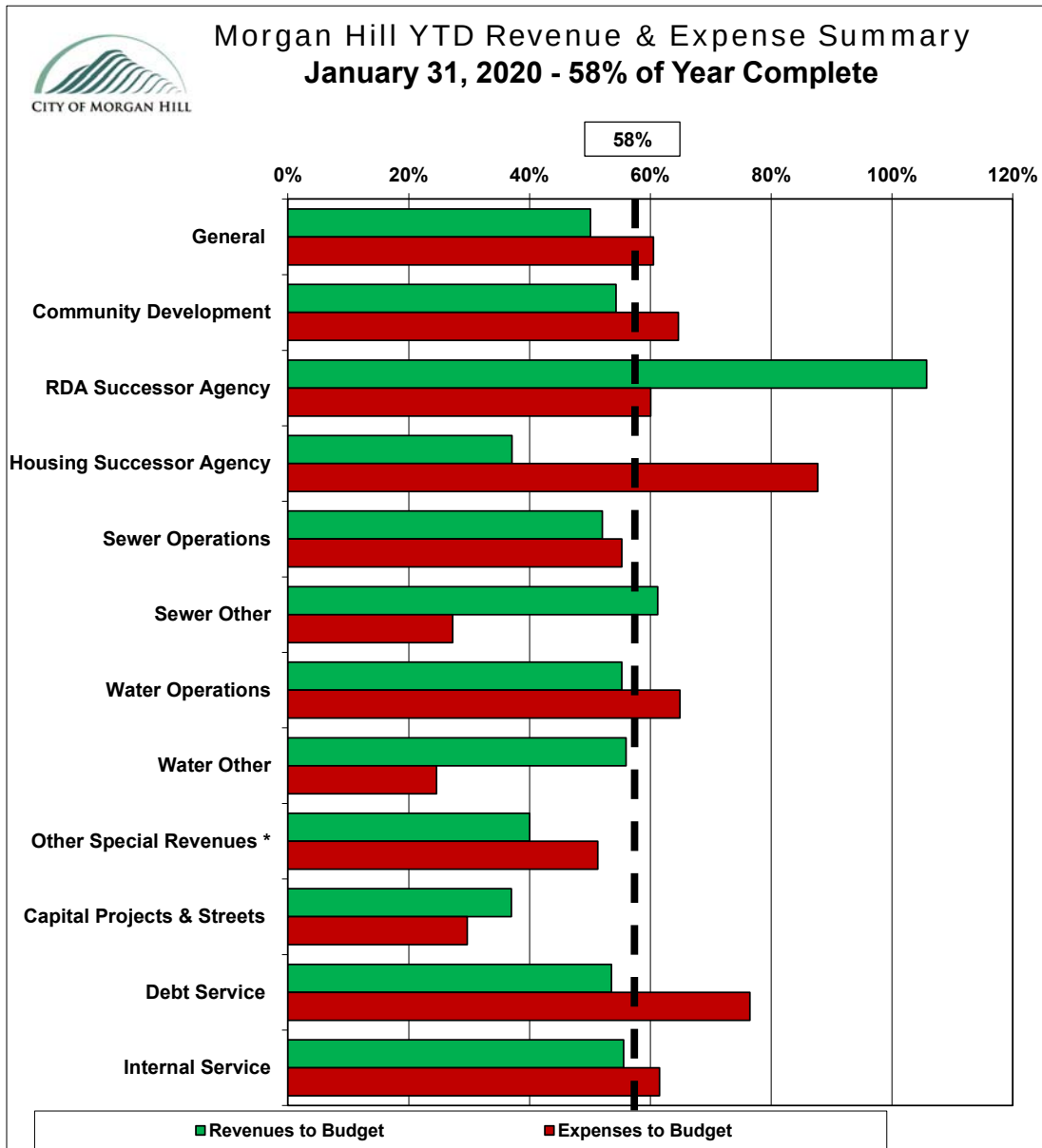
- **Investments** – No purchases were made and one security was called during the month of January 2020. Total interest earnings received on investments were \$51,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
January 31, 2020 - 58% of Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



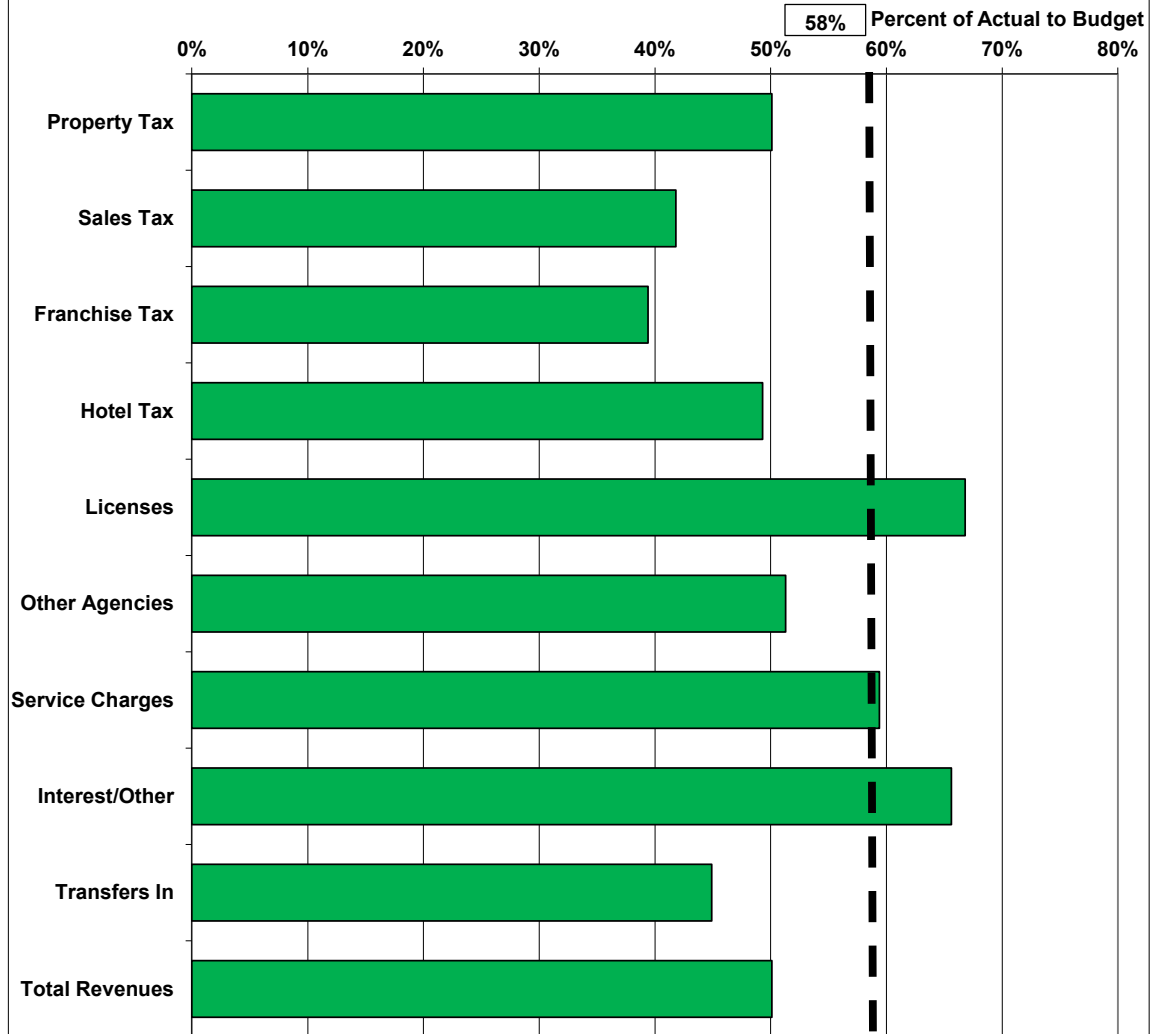
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 21,610,566	50%	\$ 26,610,471	60%
Community Development	2,858,395	54%	3,868,279	65%
RDA Successor Agency	7,331,586	106%	4,185,855	60%
Housing Successor Agency	205,419	37%	820,541	88%
Sewer Operations	6,307,609	52%	6,677,847	55%
Sewer Other	4,873,997	61%	6,473,288	27%
Water Operations	8,164,848	55%	9,856,257	65%
Water Other	2,993,580	56%	1,478,920	25%
Other Special Revenues *	1,543,795	40%	1,977,992	51%
Capital Projects & Streets	7,738,524	37%	18,543,788	30%
Debt Service	363,171	54%	529,357	76%
Internal Service	6,651,334	56%	7,013,054	61%
TOTAL FOR ALL FUNDS	\$ 70,642,824	53%	\$ 88,035,648	46%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

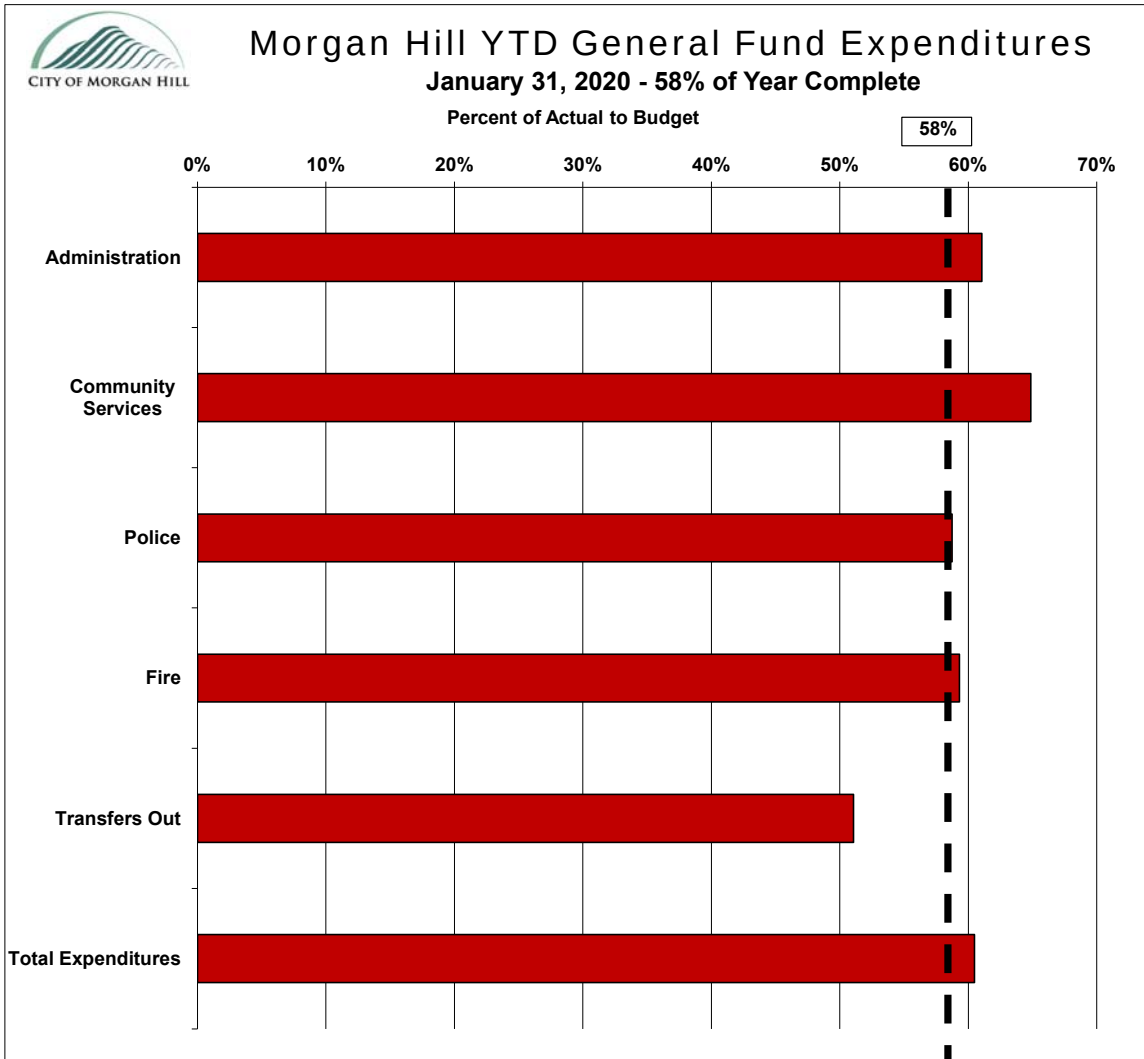


Morgan Hill YTD General Fund Revenues

January 31, 2020 - 58% of Year Complete



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 13,082,377	\$ 6,553,913	50%	\$ 6,192,857	6%
Sales Tax	10,476,000	4,383,180	42%	4,708,846	-7%
Franchise Tax	2,319,566	913,478	39%	872,134	5%
Hotel Tax	3,080,880	1,519,843	49%	1,473,084	3%
Licenses	206,940	138,296	67%	196,894	-30%
Other Agencies	403,389	206,965	51%	167,164	24%
Service Charges	10,267,724	6,099,533	59%	5,711,015	7%
Interest/Other	1,471,324	965,131	66%	950,918	1%
Transfers In	1,847,658	830,227	45%	873,211	-5%
TOTAL REVENUES	\$ 43,155,858	\$ 21,610,566	50%	\$ 21,146,124	2%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,835,112	\$ 2,952,110	61%	\$ 2,940,912	0%
Community Services	12,689,427	8,230,074	65%	7,356,039	12%
Police	17,372,961	10,205,371	59%	9,345,937	9%
Fire	6,961,396	4,128,586	59%	3,898,294	6%
Transfers Out	2,142,463	1,094,331	51%	1,062,271	3%
TOTAL EXPENDITURES	\$ 44,001,359	\$ 26,610,471	60%	\$ 24,603,453	8%

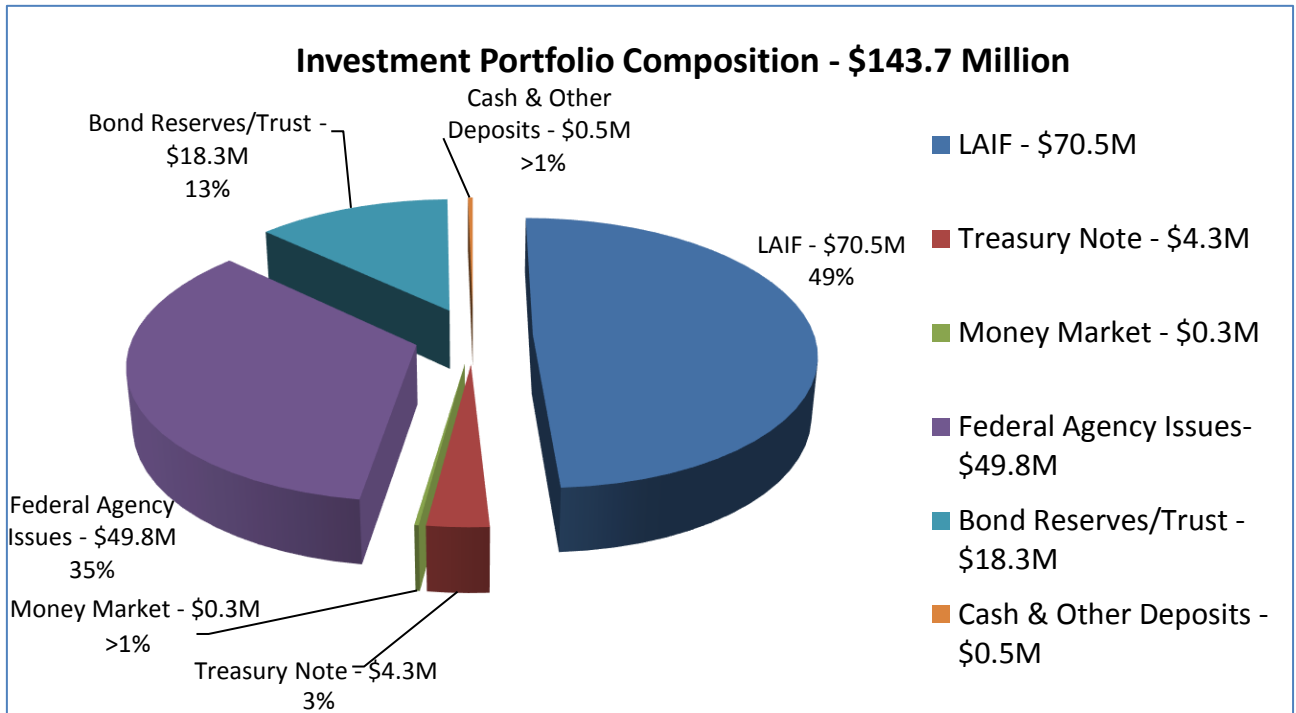


**City of Morgan Hill
Recreation Report - Fiscal Year 2019-20
For the Month and Seven Months Ended January 31, 2020
58% of Year Complete**

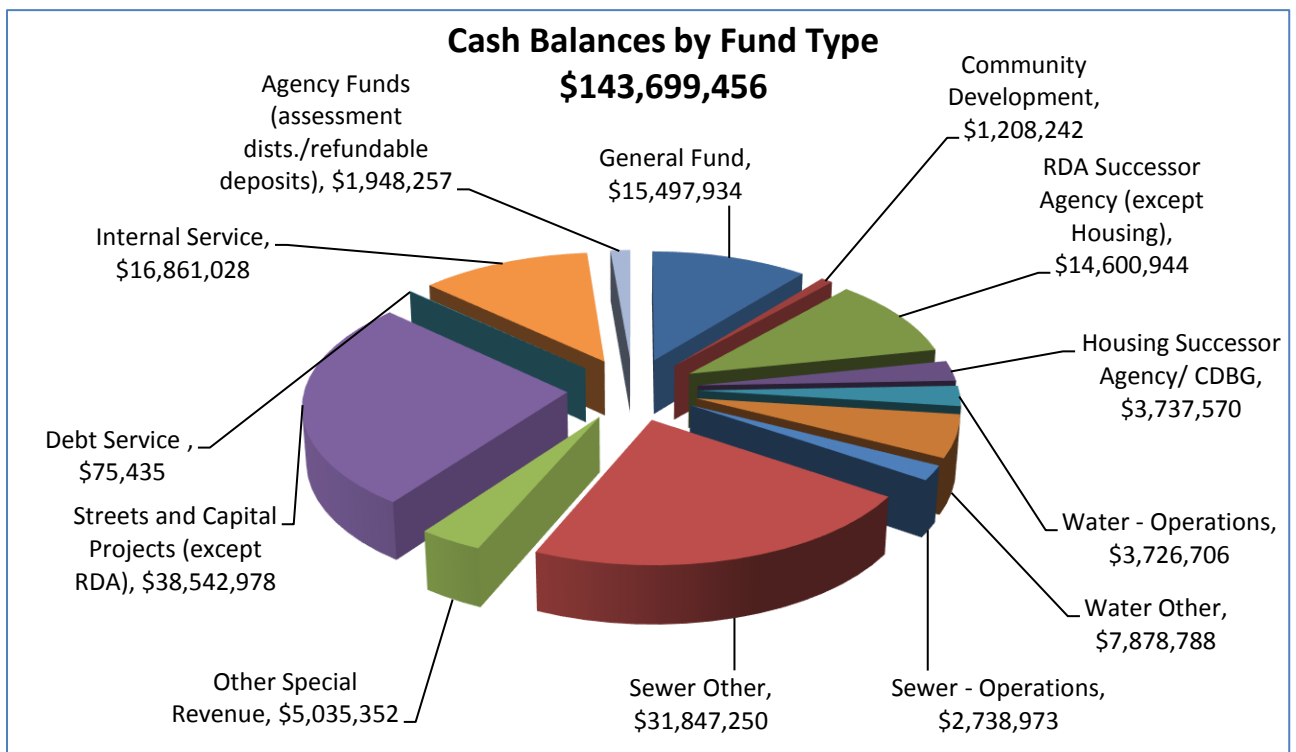
	<u>Budget</u>	<u>January 2020</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,426,631	\$ 515,187	\$ 3,767,751	
Facility Rentals	915,330	106,557	608,964	
Community Services	149,705	38,612	65,140	
Transfers in	75,000	6,250	43,750	
Total Revenues	\$ 7,566,666	\$ 666,606	\$ 4,485,606	59%
Less: Expenditures				
Membership & Program Services	\$ 6,371,297	\$ 394,524	\$ 3,514,851	
Facility Rentals	1,356,318	122,873	787,492	
Community Services	648,407	49,399	352,971	
Total Expenditures	\$ 8,376,023	\$ 566,796	\$ 4,655,315	56%
Net Impact without encumbrances	\$ (809,357)	\$ 99,810	\$ (169,709)	
Encumbrances	-	-	1,085,598	
Net Impact with encumbrances	\$ (809,357)	\$ 99,810	\$ (1,255,307)	

City of Morgan Hill
Monthly Investment Report - January 31, 2020

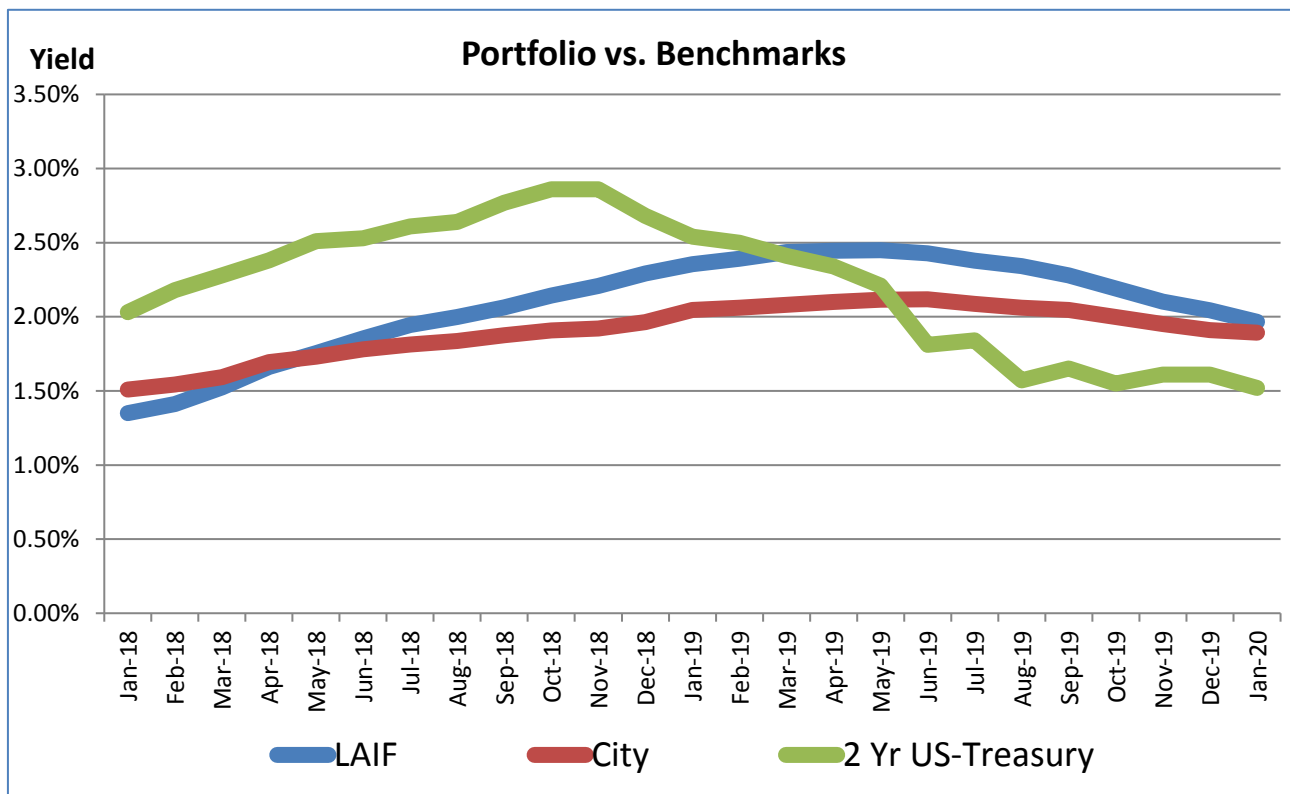
The following are the snapshots of City's investment portfolio as of January 31, 2020. The first chart shows the portfolio composition by investment type:



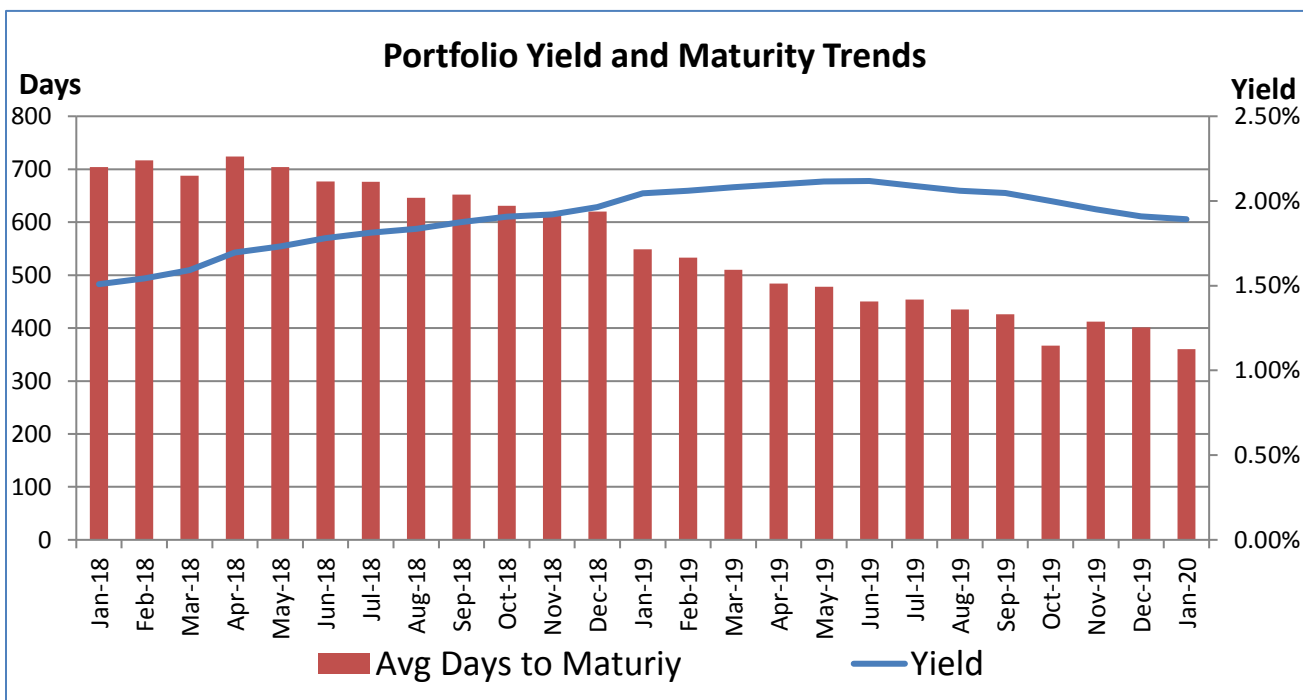
The chart below shows cash balances by fund type reconciled to City's financial system:



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 January 31, 2020

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 70,540,762	49.09%	\$ 70,665,640	1.97%		
City Managed							
Fed Home Loan Bank	6/30/2016	4,000,000	2.78%	3,994,840	1.50%	6/30/2020	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.78%	3,998,800	1.40%	8/25/2020	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.39%	2,000,300	1.65%	8/29/2020	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.78%	4,000,680	1.60%	9/29/2020	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.78%	4,000,560	1.60%	10/27/2020	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.78%	4,000,640	1.55%	10/28/2020	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.39%	2,000,380	1.65%	10/28/2020	10/28/2021
Fed Home Loan Mortgage	11/15/2016	4,000,000	2.78%	3,988,440	1.55%	10/15/2020	11/15/2021
Fed Home Loan Mortgage	11/23/2016	3,000,000	2.09%	3,000,150	1.65%	2/23/2020	11/23/2021
Fed Home Loan Mortgage	11/23/2016	4,000,000	2.78%	4,000,160	1.63%	11/23/2020	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.78%	4,000,800	1.88%	2/26/2020	11/26/2021
Treasury Note	4/30/2018	4,337,216	3.28%	4,527,765	2.73%	3/31/2023	3/31/2023
Fed Home Loan Mortgage	7/10/2019	3,000,000	2.09%	3,005,940	2.15%	7/2/2020	7/2/2024
Fed Farm Credit BKS	11/5/2019	3,000,000	2.09%	3,006,480	2.00%	11/5/2020	11/5/2024
Fed Farm Credit BKS	12/13/2019	2,998,540	2.09%	3,009,630	1.90%	12/27/2020	11/27/2024
Fed Home Loan Bank	9/26/2018	749,494	0.52%	750,945	2.80%	3/30/2020	3/30/2020
Fed Home Loan Mortgage	1/18/2019	999,806	0.70%	1,002,070	2.59%	4/23/2020	4/23/2020
Sub Total/Average		\$ 54,085,057	37.90%	\$ 54,288,580	1.79%		
Money Market		\$ 308,488	0.21%	\$ 308,488	1.47%		
Total City Managed/Average		\$ 124,934,306	87.20%	\$ 125,262,708	1.89%		
Bond Reserve Accounts - Held By Trustees		\$ 14,919,480	10.38%	\$ 14,919,480			
Cash/Deposits		\$ 458,266	0.32%	\$ 458,266			
PARS Trust		\$ 3,387,404	2.36%	\$ 3,900,721			
GRAND TOTAL/AVERAGE		\$ 143,699,456	100%	\$ 144,541,174			

Attachment: January 2020 Financial and Investment Report [Revision 1] (2665 : Accept January 2020 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF JANUARY 31, 2020
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	1.97%	\$ 67,598,555	47.04%	\$ 67,718,225
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.97%	2,942,206	2.05%	2,947,415
Federal Issues	All Funds Pooled	1.69%	49,747,840	34.62%	49,760,815
US Treasury Notes	All Funds Pooled	2.73%	4,337,216	3.02%	4,527,765
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.47%	308,488	0.21%	308,488
	SUBTOTAL		\$ 124,934,306	86.94%	\$ 125,262,708
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	1.24%	200	0.00%	200
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.24%	254	0.00%	254
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.47%	14,397,018	10.02%	14,397,018
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.24%	257,381	0.18%	257,381
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.24%	264,628	0.18%	264,628
	SUBTOTAL		14,919,480	10.38%	14,919,480
Other Cash/Deposits					
General Checking	All Funds		421,154	0.29%	421,154
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.00%	7,112
PARS - OPEB Trust			2,187,404	1.52%	2,544,221
PARS - PENSION Trust			1,200,000	0.84%	1,356,500
	SUBTOTAL		3,845,670	2.68%	4,358,986
Total Cash and Investments			\$ 143,699,456	100.00%	\$ 144,541,174

CASH ACTIVITY SUMMARY
FY 2019-20

Fund Type	07/1/19 Balance	Change in Cash Balance	1/31/2020 Balance
General Fund	\$ 16,094,062	\$ (596,129)	\$ 15,497,934
Community Development	2,835,370	(1,627,128)	1,208,242
RDA Successor Agency (except Housing)	10,774,671	3,826,273	14,600,944
Housing Successor Agency/ CDBG	4,065,899	(328,329)	3,737,570
Water - Operations	2,862,753	863,953	3,726,706
Water Other	6,212,393	1,666,395	7,878,788
Sewer - Operations	1,677,931	1,061,042	2,738,973
Sewer Other	31,500,213	347,037	31,847,250
Other Special Revenue	5,130,146	(94,793)	5,035,352
Streets and Capital Projects (except RDA)	43,758,217	(5,215,239)	38,542,978
Debt Service	240,894	(165,460)	75,435
Internal Service	15,531,375	1,329,653	16,861,028
Agency Funds (assessment dists./refundable deposits)	4,307,504	(2,359,246)	1,948,257
Total	\$ 144,991,427	\$ (1,291,971)	\$ 143,699,456

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 Seven Months Ended January 31, 2020
58% 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	\$ 5,793,333	52%	\$ 5,367,378	\$ 425,955	8%
Property Tax - RPTTF Residual Distribution	1,573,610	1,573,610	673,465	43%	704,304	(30,839)	-4%
Property Tax - Supplemental Roll	319,260	319,260	87,116	27%	121,175	(34,059)	-28%
Sales Tax	10,091,000	10,091,000	4,229,672	42%	4,494,595	(264,923)	-6%
Public Safety Sales Tax	385,000	385,000	153,508	40%	214,251	(60,743)	-28%
Transient Occupancy Taxes	3,080,880	3,080,880	1,519,843	49%	1,473,084	46,759	3%
Franchise (Refuse, Cable, PG&E)	2,319,566	2,319,566	913,478	39%	872,134	41,343	5%
Property Transfer Tax	515,000	515,000	277,036	54%	265,903	11,133	4%
TOTAL TAXES	29,473,823	29,473,823	13,647,450	46%	13,512,825	134,625	1%
LICENSES/PERMITS							
Business License	202,000	202,000	132,447	66%	193,083	(60,636)	-31%
Other Permits	4,940	4,940	5,849	118%	3,811	2,038	53%
TOTAL LICENSES/PERMITS	206,940	206,940	138,296	67%	196,894	(58,598)	-30%
FINES AND PENALTIES							
Parking Enforcement	8,500	8,500	2,756	32%	5,131	(2,375)	-46%
Bails & Fines	73,645	73,645	28,089	38%	49,826	(21,737)	-44%
Administrative Citations	9,785	9,785	77,606	793%	813	76,793	9443%
TOTAL FINES AND PENALTIES	91,930	91,930	108,451	118%	55,770	52,681	94%
OTHER AGENCIES							
Motor Vehicle in-Lieu	24,652	24,652	-	n/a	-	-	n/a
Other Revenue - Other Agencies	403,389	403,389	206,965	51%	167,164	39,801	24%
TOTAL OTHER AGENCIES	428,041	428,041	206,965	48%	167,164	39,801	24%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,990	33,990	15,214	45%	27,671	(12,457)	-45%
Business License Application Review	36,000	36,000	23,682	66%	27,740	(4,058)	-15%
Membership Services & Rec Programs	6,426,631	6,426,631	3,767,751	59%	3,713,057	54,694	1%
Facility Rentals	915,330	915,330	608,964	67%	576,954	32,011	6%
Community Services	149,705	149,705	65,140	44%	37,634	27,506	73%
General Administration Overhead	1,795,198	1,795,198	1,044,995	58%	995,232	49,763	5%
Other Charges Current Services	910,870	910,870	573,786	63%	332,727	241,059	72%
TOTAL CURRENT SERVICES	10,267,724	10,267,724	6,099,533	59%	5,711,015	388,518	7%
OTHER REVENUE							
Use of money/property	517,900	517,900	330,321	64%	258,304	72,017	28%
Other Revenues	311,842	321,842	249,323	77%	370,940	(121,618)	-33%
TOTAL OTHER REVENUE	829,742	839,742	579,644	69%	629,244	(49,601)	-8%
TRANSFERS IN							
One Time Transfer	180,000	180,000	104,993	58%	-	104,993	0%
Public Safety	100,000	100,000	92,415	92%	48,809	43,605	89%
Fire Impact	-	25,000	25,000	100%	-	25,000	0%
Streets	738,968	738,968	138,995	19%	358,460	(219,466)	-61%
Police Impact	25,000	25,000	14,581	58%	14,581	-	n/a
Sewer Operations	351,845	351,845	205,247	58%	203,805	1,442	1%
Water Operations	351,845	351,845	205,247	58%	203,805	1,442	1%
Park Development	75,000	75,000	43,750	58%	43,750	-	n/a
TOTAL TRANSFERS IN	1,822,658	1,847,658	830,227	45%	873,211	(42,984)	-5%
TOTAL GENERAL FUND	43,120,858	43,155,858	21,610,566	50%	21,146,124	464,443	2%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	738,968	738,968	431,531	58%	360,256	71,276	20%
Interest / Other Revenue/Other Charges	-	-	1,664	n/a	1,594	70	4%
202 STREET MAINTENANCE	738,968	738,968	433,196	59%	361,850	71,346	20%

Attachment: January 2020 Financial and Investment Report [Revision 1] (2665 : Accept January 2020 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Seven Months Ended January 31, 2020
58% 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	990	733%	643	347	54%
Police Grant/SLEF/JAG	100,000	100,000	89,281	89%	82,080	7,201	9%
205 PUBLIC SAFETY TRUST	100,135	100,135	90,271	90%	82,723	7,548	9%
206 DEVELOPMENT SERVICES							
Building Fees	3,275,864	3,275,864	1,870,543	57%	1,741,303	129,240	7%
Planning Fees	1,476,912	1,476,912	809,269	55%	798,353	10,916	1%
Engineering Fees	495,977	495,977	154,732	31%	258,656	(103,924)	-40%
Other Revenue/Current Charges	14,682	14,682	23,851	162%	32,876	(9,025)	-27%
206 DEVELOPMENT SERVICES	5,263,435	5,263,435	2,858,395	54%	2,831,187	27,208	1%
207 LONG RANGE PLANNING	736,371	736,371	412,531	56%	423,265	(10,734)	-3%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,660	3,660	676	18%	617	58	9%
215 and 216 HCD BLOCK GRANT	3,660	3,660	676	18%	617	58	9%
225 ASSET SEIZURE	2,227	2,227	17,290	776%	32,632	(15,343)	-47%
229 LIGHTING AND LANDSCAPE	189,158	189,158	97,338	51%	99,265	(1,927)	-2%
230 COMMUNITY FACILITIES DISTRICT	44,504	44,504	24,711	56%	34,202	(9,491)	-28%
232 ENVIRONMENTAL PROGRAMS	409,843	409,843	256,456	63%	256,308	147	0%
234 MOBILE HOME PARK RENT STAB.	873	873	6,230	714%	8,988	(2,758)	-31%
235 SENIOR HOUSING	4,462	4,462	2,427	54%	2,119	308	15%
236 HOUSING MITIGATION	2,336,690	2,336,690	621,124	27%	984,463	(363,339)	-37%
240 EMPLOYEE ASSISTANCE	29,256	29,256	12,064	41%	12,969	(905)	-7%
247 ENVIRONMENT REMEDIATION	2,824	2,824	2,678	95%	1,281	1,398	109%
250 COMH-SUCCESSOR AGENCY-MHRDA	6,935,750	6,935,750	7,331,586	106%	11,902,300	(4,570,714)	-38%
255 HOUSING SUCCESSOR AGENCY	553,622	553,622	205,419	37%	56,145	149,275	266%
TOTAL SPECIAL REVENUE FUNDS	17,351,779	17,351,779	12,372,391	71%	17,090,314	(4,717,923)	-28%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	2,647,562	2,677,562	807,934	30%	1,448,699	(640,765)	-44%
302 PARK MAINTENANCE	1,371,696	1,371,696	245,433	18%	456,972	(211,539)	-46%
303 LOCAL DRAINAGE	1,652,576	1,652,576	566,859	34%	370,479	196,380	53%
304 LOCAL DRAINAGE/NON AB1600	83,498	83,498	16,538	20%	97,348	(80,811)	-83%
306 AGRICULTURE & OPEN SPACE PRESERVATION	3,420,324	3,420,324	743,631	22%	1,960,702	(1,217,071)	-62%
308 STREET CIP	5,068,938	5,068,938	2,638,997	52%	1,820,183	818,814	45%
309 TRAFFIC IMPACT	1,283,196	1,283,196	830,433	65%	1,694,889	(864,456)	-51%
311 POLICE IMPACT	295,109	295,109	142,645	48%	217,778	(75,133)	-34%
313 FIRE IMPACT	469,220	469,220	86,468	18%	218,283	(131,815)	-60%
346 PUBLIC FACILITIES NON-AB1600	630,420	630,420	177,100	28%	134,923	42,177	31%
347 PUBLIC FACILITIES IMPACT	221,932	221,932	148,875	67%	154,207	(5,332)	-3%
348 LIBRARY	936,224	936,224	295,039	32%	588,339	(293,300)	-50%
350 UNDERGROUNDING	50,079	50,079	9,151	18%	141,065	(131,914)	-94%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	656,864	656,864	82,025	12%	30,844	51,181	166%
360 COMMUNITY/REC IMPACT FUND	1,359,693	1,359,693	514,200	38%	757,119	(242,918)	-32%
TOTAL CAPITAL PROJECTS FUNDS	20,147,331	20,177,331	7,305,328	36%	10,091,832	(2,786,503)	-28%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,874	301,874	175,958	58%	174,248	1,710	1%
441 POLICE FACILITY BOND	376,090	376,090	187,213	50%	187,364	(151)	0%
TOTAL DEBT SERVICE FUNDS	677,964	677,964	363,171	54%	361,612	1,559	0%

Attachment: January 2020 Financial and Investment Report [Revision 1] (2665 : Accept January 2020 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Seven Months Ended January 31, 2020
58% 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	5,590,940	48%	5,192,328	398,612	8%
Interest Income/Transfers	43,166	43,166	39,520	92%	18,786	20,733	110%
Other Revenue/Current Charges	328,660	328,660	677,150	206%	675,329	1,821	0%
640 SEWER OPERATION	12,117,909	12,117,909	6,307,609	52%	5,886,443	421,166	7%
641 SEWER EXPANSION							
Interest Income	253,972	253,972	209,658	83%	166,019	43,639	26%
Development Impact Fee	4,801,041	4,801,041	2,894,475	60%	3,691,964	(797,489)	-22%
Transfers/Other	-	-	-	n/a	-	-	0%
641 SEWER EXPANSION	5,055,013	5,055,013	3,104,133	61%	3,857,983	(753,850)	-20%
642 SEWER RATE STABILIZATION	52,262	52,262	27,878	53%	24,347	3,531	15%
643 SEWER-CAPITAL PROJECT	2,853,531	2,853,531	1,741,986	61%	1,697,343	44,642	3%
TOTAL SEWER FUNDS	20,078,715	20,078,715	11,181,606	56%	11,466,116	(284,510)	-2%
650 WATER OPERATION							
Water Sales	13,400,000	13,400,000	7,307,149	55%	6,740,504	566,646	8%
Meter Install & Service	125,500	125,500	11,928	10%	81,325	(69,397)	-85%
Transfers-In / Interest Income	478,039	478,039	287,969	60%	264,868	23,101	9%
Other Revenue/Current Charges	776,961	776,961	557,802	72%	587,151	(29,349)	-5%
650 WATER OPERATION	14,780,500	14,780,500	8,164,848	55%	7,673,847	491,001	6%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	73,821	73,821	27,281	37%	28,774	(1,493)	-5%
Development Impact Fee	1,452,925	1,452,925	710,894	49%	1,035,702	(324,808)	-31%
651 WATER EXPANSION	1,526,746	1,526,746	738,175	48%	1,064,476	(326,301)	-31%
652 Water Rate Stabilization	11,107	11,107	18,710	168%	5,209	13,502	259%
653 Water Capital Project	3,812,288	3,812,288	2,236,695	59%	1,509,085	727,609	48%
TOTAL WATER FUNDS	20,130,641	20,130,641	11,158,428	55%	10,252,617	905,811	9%
TOTAL ENTERPRISE FUNDS	40,209,356	40,209,356	22,340,034	56%	21,718,733	621,301	3%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,783,719	1,783,719	1,057,141	59%	1,102,963	(45,822)	-4%
740 BUILDING MAINTENANCE	3,258,548	3,258,548	1,877,308	58%	1,980,732	(103,425)	-5%
741 BUILDING REPLACEMENT	831,677	831,677	468,614	56%	448,637	19,977	4%
745 CIP ADMINISTRATION	1,871,909	1,871,909	976,809	52%	739,722	237,086	32%
760 UNEMPLOYMENT INSURANCE	2,898	2,898	1,478	51%	1,494	(16)	-1%
770 WORKERS COMPENSATION	800,422	800,422	489,564	61%	472,746	16,817	4%
790 EQUIPMENT REPLACEMENT	1,052,269	1,119,217	692,258	62%	712,488	(20,230)	-3%
791 EMPLOYEE BENEFITS	1,229,852	1,229,852	461,814	38%	792,562	(330,748)	-42%
795 GENERAL LIABILITY INSURANCE	1,076,586	1,076,586	626,351	58%	595,946	30,404	5%
TOTAL INTERNAL SERVICE FUNDS	11,907,880	11,974,828	6,651,334	56%	6,847,291	(195,957)	-3%
TOTAL FOR ALL FUNDS	\$ 133,415,168	\$ 133,547,116	\$ 70,642,824	53%	\$ 77,255,905	\$ (6,613,080)	-9%

Attachment: January 2020 Financial and Investment Report [Revision 1] (2665 : Accept January 2020 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2019-20
For the Month and Seven Months Ended January 31, 2020
58% 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	\$ 87,161	\$ 336,684	\$ 300,131	\$ 25,000	\$ 325,131	97%	\$ 209
	CITY ATTORNEY	87,742	763,698	437,423	78,087	515,509	68%	361
	CITY MANAGER	49,666	580,167	276,696	53,527	330,223	57%	221
	HUMAN RESOURCES	71,506	751,908	417,447	-	417,447	56%	471
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	58,360	601,560	350,841	6,131	356,971	59%	311
	Elections	32,555	178,037	48,696	-	48,696	27%	131
	COUNCIL SVCS & RECORDS MGMT	90,915	779,597	399,537	6,131	405,668	52%	451
	FINANCE	146,491	1,623,059	939,836	18,297	958,133	59%	921
	TOTAL ADMINISTRATION	533,481	4,835,112	2,771,069	181,041	2,952,110	61%	2,651
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	394,524	6,371,297	3,514,851	958,301	4,473,153	70%	3,351
	Recreation Facility Rentals	122,873	1,356,318	787,492	18,550	806,042	59%	751
	Community Services	49,399	648,407	352,971	108,746	461,717	71%	321
	Environmental Services	22,019	293,918	130,591	-	130,591	44%	121
	Street Maintenance	280,105	2,386,836	1,229,232	155,926	1,385,158	58%	1,271
	Downtown Maintenance	25,963	321,475	184,016	46,573	230,589	72%	191
	Cable Television	2,314	22,594	13,100	-	13,100	58%	11
	COMMUNITY SERVICES	897,198	11,400,845	6,212,253	1,288,097	7,500,350	66%	6,041
	CODE COMPLIANCE	16,055	160,943	92,378	-	92,378	57%	81
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	29,678	318,537	159,288	-	159,288	50%	31
	ECONOMIC DEVELOPMENT PROGRAMS	73,295	809,102	398,126	79,931	478,057	59%	411
	TOTAL COMMUNITY SERVICES	1,016,227	12,689,427	6,862,046	1,368,028	8,230,074	65%	6,571
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	118,157	1,300,288	778,315	6,547	784,862	60%	721
	Field Operations	959,041	9,094,915	5,241,307	143,078	5,384,385	59%	5,001
	Support Services	195,293	2,318,572	1,304,237	7,500	1,311,737	57%	1,251
	Emergency Services/Haz Mat	21,029	195,641	112,860	-	112,860	58%	91
	Special Operations	272,803	2,747,543	1,500,697	29,393	1,530,090	56%	1,131
	Dispatch Services	224,125	1,716,002	1,081,436	-	1,081,436	63%	891
	POLICE	1,790,447	17,372,961	10,018,852	186,519	10,205,371	59%	9,111
	FIRE	531,087	6,961,396	4,052,726	75,860	4,128,586	59%	3,841
	TOTAL PUBLIC SAFETY	2,321,534	24,334,358	14,071,578	262,379	14,333,957	59%	12,951
IV. TRANSFERS								
	Other	156,333	2,142,463	1,094,331	-	1,094,331	51%	1,061
	TOTAL TRANSFERS	156,333	2,142,463	1,094,331	-	1,094,331	51%	1,061
	TOTAL GENERAL FUND	4,027,574	44,001,359	24,799,024	1,811,448	26,610,471	60%	23,251

Attachment: January 2020 Financial and Investment Report [Revision 1] (2665 : Accept January 2020 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Seven Months Ended January 31, 2020
 58% 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	141,389	-	141,389	19%	36%
205	PUBLIC SAFETY/SUPP.LAW	572	106,863	96,419	-	96,419	90%	5%
206	DEVELOPMENT SERVICES FUND							
	Planning	218,163	2,516,024	1,255,664	67,552	1,323,216	53%	1,26%
	Building	119,425	1,998,366	1,142,194	194,561	1,336,755	67%	97%
	Engineering	147,788	1,469,242	835,658	372,650	1,208,307	82%	77%
206	DEVELOPMENT SERVICES FUND	485,376	5,983,632	3,233,516	634,762	3,868,279	65%	3,00%
207	LONG RANGE PLANNING	55,326	736,054	281,950	193,715	475,665	65%	33%
215/216	CDBG	434	5,209	3,038	-	3,038	58%	3%
229	LIGHTING AND LANDSCAPE	14,865	206,031	106,787	29,455	136,242	66%	10%
230	COMMUNITY FACILITIES DISTRICT	3,053	46,979	20,057	-	20,057	43%	1%
232	ENVIRONMENT PROGRAMS	34,081	439,095	236,968	21,962	258,929	59%	21%
234	MOBILE HOME PARK	35	425	245	-	245	58%	2%
236	HOUSING MITIGATION	119,125	2,285,207	807,466	156,742	964,207	42%	1,47%
240	EMPLOYEE ASSISTANCE	81	28,477	21,096	-	21,096	74%	1%
247	ENVIRONMENTAL REMEDIATION	739	-	2,093	-	2,093	n/a	3%
250	COMH-SUCCESSOR AGENCY-MHRDA	3,208	6,973,161	4,185,855	-	4,185,855	60%	8,50%
255	HOUSING SUCCESSOR AGENCY	95,565	935,845	552,831	267,710	820,541	88%	3,51%
TOTAL SPECIAL REVENUE FUNDS		812,802	18,490,050	9,689,709	1,304,346	10,994,055	59%	17,60%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	80,098	12,547,895	1,748,735	400,252	2,148,986	17%	22%
302	PARK MAINTENANCE	123,775	1,227,852	698,510	99,491	798,001	65%	65%
303	LOCAL DRAINAGE	70,294	2,924,734	220,232	298,487	518,719	18%	6%
304	LOCAL DRAIN. NON-AB1600	21,562	486,660	48,283	50,103	98,386	20%	5%
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,655	6,695,683	3,170,949	35,956	3,206,905	48%	2,51%
308	STREET CIP	859,926	8,456,398	4,421,239	357,272	4,778,511	57%	1,67%
309	TRAFFIC IMPACT	106,161	18,536,119	692,756	76,406	769,163	4%	4,65%
311	POLICE IMPACT	2,409	226,130	115,868	-	115,868	51%	11%
313	FIRE IMPACT	278	53,425	27,233	9,462	36,695	69%	2%
346	PUBLIC FAC.NON AB1600	1,104	930,930	86,055	30,081	116,136	12%	11%
347	PUBLIC FACILITIES IMPACT	13,123	177,688	96,998	11,418	108,416	61%	3%
348	LIBRARY IMPACT	290,434	3,849,389	879,150	1,587,265	2,466,414	64%	33%
350	UNDERGROUNDING	90	1,075	630	-	630	59%	5%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	22,594	2,190,266	241,203	17,613	258,816	12%	3%
360	COMM/REC CENTER IMPACT	148,604	3,441,478	533,953	2,446,798	2,980,751	87%	5%
TOTAL CAPITAL PROJECTS FUNDS		1,743,106	61,745,723	12,981,796	5,420,604	18,402,399	30%	10,47%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	839	311,636	228,653	-	228,653	73%	22%
441	POLICE FACILITY BOND DEBT	320	380,552	300,704	-	300,704	79%	29%
TOTAL DEBT SERVICE FUNDS		1,159	692,188	529,357	-	529,357	76%	51%

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City of Morgan Hill
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 For the Month and Seven Months Ended January 31, 2020
 58% 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	931,161	12,087,541	6,081,888	595,959	6,677,847	55%	5,701
641	SEWER CAPITAL EXPANSION	66,022	13,399,255	627,701	213,876	841,578	6%	751
642	SEWER RATE STABILIZATION	90	1,078	630	-	630	58%	51
643	SEWER-CAPITAL PROJECTS	531,021	10,335,505	3,379,712	2,251,368	5,631,080	54%	3,891
TOTAL SEWER FUND(S)		1,528,294	35,823,378	10,089,932	3,061,203	13,151,135	37%	10,351
WATER								
	Water Operations	1,026,527	14,203,740	7,869,946	1,353,238	9,223,185	65%	6,271
	Utility Billing	81,499	789,099	480,999	17,850	498,849	63%	441
	Water Conservation	8,089	198,464	38,824	95,400	134,224	68%	51
650	WATER OPERATIONS	1,116,114	15,191,302	8,389,768	1,466,488	9,856,257	65%	6,761
651	WATER CAPITAL EXPANSION	70,465	2,281,224	849,766	185,339	1,035,105	45%	1,201
652	WATER RATE STABILIZATION	29	352	203	-	203	58%	21
653	WATER-CAPITAL PROJECTS	11,450	3,731,255	386,300	57,312	443,612	12%	681
TOTAL WATER FUND(S)		1,198,058	21,204,133	9,626,037	1,709,140	11,335,177	53%	8,651
TOTAL ENTERPRISE FUNDS		2,726,352	57,027,512	19,715,969	4,770,343	24,486,312	43%	19,011
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	151,928	2,334,467	1,050,283	270,523	1,320,806	57%	861
740	BUILDING MAINTENANCE	287,551	3,338,819	1,699,735	280,066	1,979,800	59%	1,661
741	BUILDING REPLACEMENT	14,451	278,950	181,809	49,138	230,948	83%	221
745	CIP ADMINISTRATION	178,460	1,619,521	976,809	9,809	986,617	61%	741
760	UNEMPLOYMENT	4,961	10,000	11,990	-	11,990	120%	11
770	WORKERS COMPENSATION	10,472	952,045	790,357	-	790,357	83%	441
790	EQUIPMENT REPLACEMENT	189,626	1,213,015	224,691	236,568	461,259	38%	236
791	EMPLOYEE BENEFITS FUND	45,577	615,000	386,878	-	386,878	63%	721
795	GEN. LIABILITY INSURANCE	16,329	1,044,568	844,398	-	844,398	81%	831
TOTAL INTERNAL SERVICE FUNDS		899,355	11,406,384	6,166,950	846,104	7,013,054	61%	5,511
REPORT TOTAL		\$ 10,210,348	\$ 193,363,216	\$ 73,882,804	\$ 14,152,844	\$ 88,035,648	46%	\$ 76,381

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City of Morgan Hill
Fund Activity Summary - Fiscal Year 2019-20
For the Seven Months Ended January 31, 2020
58% 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	\$ 21,610,566	50%	\$ 24,799,024	56%	\$ (3,188,457)	\$ 1,811,448	\$ 12,924,184
TOTAL GENERAL FUND		\$ 17,924,089	\$ 21,610,566	50%	\$ 24,799,024	56%	\$ (3,188,457)	\$ 1,811,448	\$ 12,924,184
202	STREET MAINTENANCE	37,376	\$ 433,196	59%	\$ 141,389	57%	\$ 291,807	\$ -	\$ 329,183
205	PUBLIC SAFETY/SUPPL. LAW	93,997	90,271	90%	96,419	57%	(6,148)	-	87,849
206	DEVELOPMENT SERVICES	1,329,077	2,858,395	54%	3,233,516	54%	(375,122)	634,762	319,193
207	LONG RANGE PLANNING	1,248,188	412,531	56%	281,950	38%	130,581	193,715	1,185,053
215 / 216	CDBG	57,072	676	18%	3,038	58%	(2,362)	-	54,710
225	ASSET SEIZURE	130,210	17,290	776%	-	n/a	17,290	-	147,500
229	LIGHTING AND LANDSCAPE	158,268	97,338	51%	106,787	52%	(9,449)	29,455	119,364
230	COMMUNITY FACILITIES DISTRICT	112,386	24,711	56%	20,057	43%	4,655	-	117,041
232	ENVIRONMENTAL PROGRAMS	335,097	256,456	63%	236,968	54%	19,488	21,962	332,623
234	MOBILE HOME PK RENT STAB.	52,468	6,230	714%	245	58%	5,985	-	58,453
235	SENIOR HOUSING	228,559	2,427	54%	-	n/a	2,427	-	230,986
236	HOUSING MITIGATION	2,520,285	621,124	27%	807,466	35%	(186,342)	156,742	2,177,202
240	EMPLOYEE ASSISTANCE	63,226	12,064	41%	21,096	74%	(9,032)	-	54,194
247	ENVIRONMENT REMEDIATION	135,636	2,678	95%	2,093	n/a	585	-	136,221
250	COMH-SUCCESSOR AGENCY-MHRDA	(500,829)	7,331,586	106%	4,185,855	60%	3,145,731	2,644,902	(0)
255	HOUSING SUCCESSOR AGENCY	3,976,695	205,419	37%	552,831	59%	(347,412)	267,710	3,361,573
260	PUBLIC ART	185	-	n/a	-	-	-	-	185
TOTAL SPECIAL REVENUE FUNDS		\$ 9,977,896	\$ 12,372,391	71%	\$ 9,689,709	52%	\$ 2,682,681	\$ 3,949,248	\$ 8,711,330
301	PARK DEV. IMPACT FUND	\$ 4,116,066	\$ 807,934	30%	\$ 1,748,735	14%	\$ (940,800)	\$ 400,252	\$ 2,775,014
302	PARK MAINTENANCE	4,078,868	245,433	18%	698,510	57%	(453,077)	99,491	3,526,300
303	LOCAL DRAINAGE	12,117,049	566,859	34%	220,232	8%	346,627	298,487	12,165,189
304	LOCAL DRAINAGE/NON-AB1600	1,563,382	16,538	20%	48,283	10%	(31,746)	50,103	1,481,533
306	AGRICULTURE AND OPEN SPACE PRESERV	7,951,064	743,631	22%	3,170,949	47%	(2,427,318)	35,956	5,487,790
308	STREET CIP	3,299,044	2,638,997	52%	4,421,239	52%	(1,782,242)	357,272	1,159,530
309	TRAFFIC IMPACT FUND	(1,263,866)	830,433	65%	692,756	4%	137,677	76,406	(1,202,596)
311	POLICE IMPACT FUND	(640,897)	142,645	48%	115,868	51%	26,777	-	(614,120)
313	FIRE IMPACT FUND	3,873,198	86,468	18%	27,233	51%	59,234	9,462	3,922,970
346	PUBLIC FACILITIES NON-AB1600	(178,488)	177,100	28%	86,055	9%	91,044	30,081	(117,525)
347	PUBLIC FACILITIES IMPACT FUND	688,851	148,875	67%	96,998	55%	51,876	11,418	729,310
348	LIBRARY IMPACT FUND	2,987,436	295,039	32%	879,150	23%	(584,110)	1,587,265	816,061
350	UNDERGROUNDING	861,895	9,151	18%	630	59%	8,521	-	870,416
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,477,523	82,025	12%	241,203	11%	(159,178)	17,613	1,300,732
360	COMM/REC CTR IMPACT FUND	2,122,228	514,200	38%	533,953	16%	(19,753)	2,446,798	(344,323)
TOTAL CAPITAL PROJECT FUNDS		\$ 43,053,353	\$ 7,305,328	36%	\$ 12,981,796	21%	\$ (5,676,467)	\$ 5,420,604	\$ 31,956,282
420	CIVIC CENTER DEBT	\$ 171,351	\$ 175,958	58%	\$ 228,653	73%	\$ (52,695)	\$ 200	\$ 118,456
441	POLICE FACILITY BOND DEBT	70,213	187,213	50%	300,704	79%	(113,491)	254	(43,532)
TOTAL DEBT SERVICE FUNDS		\$ 241,564	\$ 363,171	54%	\$ 529,357	76%	\$ (166,186)	\$ 454	\$ 74,924

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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
640	SEWER OPERATIONS	\$ 3,235,529	\$ 6,307,609	52%	\$ 6,081,888	50%	\$ 225,721	595,959	2,865,291
641	SEWER IMPACT FUND*	18,119,442	3,104,133	61%	627,701	5%	2,476,432	213,876	20,381,997
642	SEWER RATE STABILIZATION	2,625,280	27,878	53%	630	58%	27,248	-	2,652,528
643	SEWER-CAPITAL PROJECTS	9,791,525	1,741,986	61%	3,379,712	33%	(1,637,727)	2,251,368	5,902,431
650	WATER OPERATIONS	4,010,886	8,164,848	55%	8,389,768	55%	(224,921)	1,466,488	2,319,477
651	WATER IMPACT FUND*	2,507,584	738,175	48%	849,766	37%	(111,590)	185,339	2,210,655
652	WATER RATE STABILIZATION	1,761,549	18,710	168%	203	58%	18,507	-	1,780,056
653	WATER -CAPITAL PROJECT	1,685,295	2,236,695	59%	386,300	10%	1,850,395	57,312	3,478,377
TOTAL ENTERPRISE FUNDS		\$ 43,737,090	\$ 22,340,034	56%	\$ 19,715,969	35%	\$ 2,624,066	\$ 4,770,343	\$ 41,590,812
730	INFORMATION SERVICES	\$ 902,325	\$ 1,057,141	59%	\$ 1,050,283	45%	\$ 6,858	\$ 270,523	\$ 638,660
740	BUILDING MAINTENANCE	64,490	1,877,308	58%	1,699,735	51%	177,573	280,066	(38,002)
741	BUILDING REPLACEMENT	2,515,067	468,614	56%	181,809	65%	286,805	49,138	2,752,733
745	CIP ENGINEERING	62,517	976,809	52%	976,809	60%	-	9,809	52,708
760	UNEMPLOYMENT	142,515	1,478	51%	11,990	120%	(10,513)	-	132,002
770	WORKERS COMPENSATION	2,015,978	489,564	61%	790,357	83%	(300,794)	30,000	1,685,184
790	EQUIPMENT REPLACEMENT	5,238,985	692,258	62%	224,691	19%	467,566	236,568	5,469,983
791	EMPLOYEE BENEFITS FUNDS	(233,198)	461,814	38%	386,878	63%	74,936	-	(158,262)
795	GEN. LIABILITY INSURANCE	1,379,596	626,351	58%	844,398	81%	(218,048)	-	1,161,548
TOTAL INTERNAL SERVICE FUNDS		\$ 12,088,275	\$ 6,651,334	56%	\$ 6,166,950	54%	\$ 484,384	\$ 876,104	\$ 11,696,555
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 17,924,089	\$ 21,610,566	50%	\$ 24,799,024	56%	\$ (3,188,457)	\$ 1,811,448	\$ 12,924,184
SPECIAL REVENUE GROUP		9,977,896	12,372,391	71%	9,689,709	52%	2,682,681	3,949,248	8,711,330
DEBT SERVICE GROUP		241,564	363,171	54%	529,357	76%	(166,186)	454	74,924
CAPITAL PROJECTS GROUP		43,053,353	7,305,328	36%	12,981,796	21%	(5,676,467)	5,420,604	31,956,282
ENTERPRISE GROUP		43,737,090	22,340,034	56%	19,715,969	35%	2,624,066	4,770,343	41,590,812
INTERNAL SERVICE GROUP		12,088,275	6,651,334	56%	6,166,950	54%	484,384	876,104	11,696,555
TOTAL ALL GROUPS		\$ 127,022,269	\$ 70,642,824	53%	\$ 73,882,804	38%	\$ (3,239,980)	\$ 16,828,200	\$ 106,954,087

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Chris Ghione, Public Services Director

APPROVED BY: No

ACCEPT DONATION FROM EDWARD BOSS PRADO FOUNDATION FOR MORGAN HILL MAGICAL BRIDGE INCLUSIVE PLAYGROUND

RECOMMENDATION(S)

1. Accept a donation of \$70,000 from the Edward Boss Prado Foundation for construction and maintenance of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

For the last several years the City has embarked on a campaign to identify and obtain funding to construct an inclusive playground at the Community Park. The City has contracted with the Magical Bridge Foundation to support the City in fundraising, grant writing and design for the playground.

The president of the Edward Boss Prado Foundation, Cecelia Ponzini, reached out to City staff to discuss an opportunity for the Foundation to donate to the City in support of the Morgan Hill Magical Bridge Inclusive Playground. The donation would come in 5 installments with \$50,000 towards construction of the Playground and \$20,000 going towards ongoing maintenance. In return for the donation, the Foundation will receive recognition as outlined in the attached Gift Agreement.

COMMUNITY ENGAGEMENT: Inform

This item serves to inform the Community of the acceptance of this donation. The City will further recognize the donation through City communications, such as the 411, social media, and during future events to commemorate the opening of the playground.

ALTERNATIVE ACTIONS:

The City Council could elect to not accept this donation or direct staff to attempt to further negotiate naming rights associated with the donation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no prior Council or Commission actions relating to this specific donation. However, construction of the Playground has been discussed and acted upon by the Council and Parks and Recreation Commission over the past five years. The project is currently out to bid. Staff anticipate the award of construction at the March 18 City Council Meeting.

FISCAL AND RESOURCE IMPACT:

The donation of \$50,000, would go directly towards funding the construction of the Playground and be deposited into Park Impact Fund (301), the project's funding source. The donation of \$20,000 for ongoing maintenance would be deposited into the Park Maintenance Fund (302) for use on maintenance of the Playground. Based on the timing of the payments, the funds will be received in future fiscal years and no budget adjustment is necessary at this time.

CEQA (California Environmental Quality Act): Categorical Exemption

The City filed a Notice of Exemption for the Project based on CEQA Guidelines Article 19, Categorical Exemptions, Sections 15301 Existing Facilities, 15304 Minor Alterations to Land and 15311 Accessory Structures.

LINKS/ATTACHMENTS:

1. EBF Signed Agreement

Gift Agreement

This Gift Agreement ("Agreement"), effective as of _____, 2020 ("Effective Date"), is made and entered into by and between the Edward Boss Prado Foundation ("Donor") and the City of Morgan Hill ("City") for construction and operation of the Inclusive Playground within Community Park ("Facility"). Based upon the Recitals below, and in consideration of the mutual promises and benefits hereunder, the parties hereto hereby agree as follows:

RECITALS

Donor wishes to make a charitable gift to the the City for the benefit of the Facility as set forth in this Agreement.

The City desires to accept such gift, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. **Gift.** Donor hereby pledges to the City for the use and benefit of the Facility the following minimum gift: \$70,000 ("Gift").
2. **Payment of the Gift.** The Gift is an irrevocable pledge that will be paid to City within upon the following Schedule:
 - a. \$50,000 due by September 30, 2020
 - b. \$5,000 due by September 30, 2021
 - c. \$5,000 due by September 30, 2022
 - d. \$5,000 due by September 30, 2023
 - e. \$5,000 due by September 30, 2024
3. **Use of the Gift.** The Gift shall be used for the specific purpose of constructing and maintaining an Inclusive Playground within Community Park.
4. **Acknowledgment.** In consideration for the Gift, the City of Morgan Hill will acknowledge the Gift through the following recognition:
 - a. Two plaques on park benches, noting specifically "a place of reflection" with the Edward Boss Prado Foundation name.
 - b. A sign inside the playhouse recognizing Cecelia's Closet with appropriate theming of the room including representation of can goods, clothing racks, etc.
 - c. One plaque near the water fountain containing all the names of the board members, past and present.
 - d. Two donor tiles at the entrance of the park will be provided. One tile will be labeled "Cecelia's Closet and Food Pantry" and one tile will be labeled "Edward Boss Prado Foundation". Tiles will be larger than base donor tiles.
5. **Termination of Recognition.** In addition to any rights and remedies available at law, the City of Morgan Hill may terminate this Agreement and all rights and benefits of the Donor hereunder, including terminating the recognition:
 - a. In the event of any default in payment of the Gift as provided in this Agreement, or
 - b. In the unlikely event the City determines in its reasonable and good faith opinion that circumstances have changed such that the recognition chosen by the Donor would adversely impact the reputation, image, mission or integrity of the City, in the event of a continued association with Donor and the continuation of the recognition provided for herein.

Upon any such termination of this Agreement and/or the recognition hereunder, the City shall have no further obligation or liability to Donor and shall not be required to return any portion of the Gift already paid. The City, however, may in its sole and absolute discretion determine an alternative recognition for the portion of the Gift already received. In the event of that the Donor becomes insolvent as a corporate entity prior to full payment the City may choose to terminate the agreement, but will not attempt to recover costs from individual members of the Donor's board of directors.
6. **Modification of Recognition.** If during the useful life of the Facility, the Facility is transferred or conveyed from the City, closed, deconstructed, destroyed or severely damaged, significantly renovated, upgraded, or modified; relocated, or replaced, then the recognition will cease. In such event, however, the

Donor, if available, and in consultation with and as mutually agreed by the City, will have the right, for no additional payment, to have another available and equivalent form of recognition provided.

7. **Publicity**

For purposes of publicizing the Gift and the recognition, the City will have the right, without charge, to photograph the Donor and use the names, likenesses, and images of the Donor in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the City's development and business activities.

Donor shall have the right to publicizing the Gift and the recognition. Donor shall have the right to utilize photographic images and video of the recognition signage and adjacent park site and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the Donor's Gift.

8. **Assignment.** This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.
9. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.
10. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Subject to the sovereign immunity of the State of California, any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Santa Clara County, California, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.
11. **City Approval.** This Agreement and the recognition provided for herein are subject to the approval by the City and this Agreement will not be effective unless and until approved by the City.

ACCEPTED AND AGREED TO:

Edward Boss Prado Foundation
Cecelia Ponzini, CEO

By: 

Date: 2-19-2020

City of Morgan Hill
Christina Turner, City Manager

By: _____

Date: _____

Approved to form:
Donald Larkin, City Attorney

By: _____

Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Anthony Eulo, Program Administrator

APPROVED BY: No

APPROVE COMMUNITY GARDEN LICENSE AGREEMENT WITH MORGAN HILL COMMUNITY GARDEN (MHCG)

RECOMMENDATION(S)

Authorize the City Manager to execute and administer the license agreement establishing an initial five-year agreement and to extend the agreement in the future if desired by both the City and Morgan Hill Community Garden.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving

Open Space and Agricultural Land

Supporting Our Youth

Seniors

and Entire Community

REPORT NARRATIVE:

The purpose of this staff report is to provide the City Council with an opportunity to review and consider a new License Agreement (Attachment 1) with Morgan Hill Community Garden (MHCG) at the new Morgan Hill Community Garden (Garden) location.

The Morgan Hill Community Garden was first established by MHCG in 2010 at the former site of the City's BMX park next to the County Courthouse. Since this time, MHCG has formalized their organization and developed a thriving community garden that both literally and figuratively feeds the community.

Since the Garden's location next to the Courthouse needs to be developed into a fire station in the future, MHCG and the City have been working for the past several years to identify and develop a permanent site. The identified property at the virtual intersection of Railroad Ave. and Butterfield Blvd. has been "gardenized" and is now ready for occupation. The attached License Agreement, which is closely modeled after the old License Agreement, has been drafted to protect the City's interests while providing MHCG with the latitude and discretion needed for them to operate the site. Unlike the former License Agreement, which was specifically designed to indicate that MHCG's occupation of the site was temporary in nature, the new License Agreement has an initial five-year term and authorizes the City Manager to further extend the agreement as long as both MHCG and the City are interested in their continued

operation at the site.

Staff recommends that the City Council authorize the City Manager to execute the License Agreement. A Grand Opening Celebration at the site has been scheduled for the morning of April 25th.

COMMUNITY ENGAGEMENT: Collaborate

Designing and building the Garden was a collaborative effort between MHCG and the City. The attached License Agreement builds off upon this collaboration. No specific or special community engagement was done related to the approval of the License Agreement as it is an administrative action consistent with the community's existing expectations for the site.

ALTERNATIVE ACTIONS:

The Council could decline to approve the agreement at this time and direct staff to revise the license agreement to address Council concerns and return to the Council at a subsequent date.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council first approved a license agreement with MHCG on August 25, 2010 and has extended the agreement numerous times at the old location. The Council approved receipt of the grant at the new site on August 24, 2016, awarded the construction contract on December 19, 2018, and accepted that project on October 23, 2019.

FISCAL AND RESOURCE IMPACT:

As there are no budgetary impacts anticipated from this decision, no budget adjustment is requested at this time. Administering this agreement is an anticipated and included activity in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

The approval of the license agreement is an administrative activity that will not result in a change to the physical environment. The site is a community garden and will remain a community garden as a result of the recommended action.

LINKS/ATTACHMENTS:

1. 2020 Community Garden License
2. signed agreement pending

REVOCABLE LICENSE
FOR THE OPERATION AND MAINTENANCE OF THE
MORGAN HILL COMMUNITY GARDEN

This REVOCABLE LICENSE FOR THE OPERATION AND MAINTENANCE OF MORGAN HILL COMMUNITY GARDEN ("LICENSE") is made and entered into on this day of _____, 2020, by and between the CITY OF MORGAN HILL, a municipal corporation ("CITY") and MORGAN HILL COMMUNITY GARDEN ("MHCG"), a California non-profit corporation.

WHEREAS, CITY owns that property known at 15690 Railroad Ave, described in Exhibit A ("PREMISES"), which the CITY has used as extra storage space; and

WHEREAS, MHCG has requested to use the PREMISES as a community garden; and

WHEREAS, the City Council has determined that a community garden is an asset for the residents of the City in promoting gardening, a beneficial use of the vacant land and promotes education regarding gardening and environmentally-sensitive gardening practices; and

WHEREAS, pursuant to Government Code Section 37350, the City Council has approved an agreement to permit MHCG to use the PREMISES for the purposes of constructing, maintaining and operating a community garden; and

WHEREAS, MHCG desires to secure and enter into an agreement in accordance with the foregoing and to construct, maintain and operate a community garden for only as long as this LICENSE is in effect; and

WHEREAS, the principal purpose of CITY entering into this LICENSE is to use the PREMISES while it is vacant to serve the common benefit of the community by providing a well-maintained and operated community garden (hereinafter "GARDEN");

NOW THEREFORE, in consideration of the premises and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, it is agreed as follows:

SECTION 1. PERMISSION GRANTED

A. For and in consideration of the payment of the sum of one dollar (\$1), and subject to all of the terms, covenants, and conditions of this LICENSE, CITY hereby grants MHCG the revocable license and permission to use PREMISES to construct, maintain and operate a community garden, including landscaping, irrigation, soil preparation and planting of crops, vegetables and plants; and not for any other purpose without the prior written consent of the Director of Public Services of the CITY. The rights herein granted shall be carried on solely within the limits and confines of said areas designated as PREMISES (Exhibit A).

B. MHCG, by accepting the LICENSE, agrees for itself, and its successors and assignees, that it will not make use of the PREMISES in any manner which might interfere with the CITY's planning and development of the PREMISES for future development or municipal uses. Furthermore, the CITY may require the surrender of reasonable portions of the PREMISES for the purpose of surveying, testing, staking or other works for the inspection or preparation of the PREMISES for future development or municipal uses.

C. This LICENSE shall be effective April 1, 2020 and shall expire on December 31, 2025 unless extended by written agreement of the CITY and MHCG; provided however, the permission and license granted under this LICENSE may be revoked and this LICENSE terminated upon a one hundred eighty (180) days written notice by the CITY to MHCG or by ninety (90) days written notice by MHCG to the CITY. The City Manager is authorized to extend the term of this LICENSE for successive terms of five years or less if requested by MHCG. Any such extension shall be in writing and signed by both CITY and MHCG.

SECTION 2. CONDITIONS OF LICENSE

The uses permitted under this License shall be subject to the following conditions and limitations:

A. Charges and Pricing. MHCG shall have the right to charge and establish prices for the usage of the GARDEN, provided that such fees and charges shall not exceed the amount reasonably necessary to pay the costs and expenses of constructing, maintaining and operating the GARDEN.

B. Non-Discrimination: MHCG, in their operations at the GARDEN for itself, its personal representatives, successors in interest and assignees, as part of the consideration hereof, does hereby covenant and agree that: (1) no person based upon any federal or state legally protected classifications (provided that restrictions may be placed on minor's use of the GARDEN) shall be excluded from the PREMISES or GARDEN or activities thereon, denied the benefits of or be otherwise subjected to unjust discrimination in access to or in the use of the facilities covered by this LICENSE; (2) that in the construction of any improvements on, over or under the PREMISES authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of any federal or state legally protected classifications, shall be excluded from participation in, denied the benefits of or otherwise be subjected to unjust discrimination. If, in the future, MHCG hires paid employees, during the term of the LICENSE, MHCG agrees not to discriminate in its employment practices against any employee or applicant for employment because of any federal or state legally protected classifications. All subcontracts entered into by MHCG shall be approved in advance by CITY and shall contain a like provision.

C. Manager: MHCG shall appoint a manager of GARDEN operations (“MANAGER”) who shall be an experienced gardener and shall have expertise in the maintenance and operation of a community garden. The MANAGER shall act as the operational contact to the CITY.

D. Safety: MHCG shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or CITY notifies MHCG of said condition. MHCG shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, MHCG shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, MHCG shall notify the CITY in writing describing the person(s) injured, and the time, place and nature of the injury. If MHCG fails to correct hazardous conditions specified by the CITY in a written notice, which have led, or in the opinion of CITY could lead, to injury, the CITY may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by MHCG to CITY on demand.

E. Security: MHCG shall be responsible for the security of the PREMISES. MHCG may install equipment approved by the CITY, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by MHCG.

F. Fund Raising and Special Events Activities: Any fundraising activity or special events to which the general public is invited to be held on the PREMISES shall be subject to the CITY’s approval in advance. MHCG will be expected to obtain all CITY permits relative to the conduct of fund-raising and/or special events.

G. Public Right-of-Way: MHCG acknowledges that Fisher Avenue is public right-of-way and therefore MHCG shall not build or encroach upon, or otherwise obstruct Fisher Avenue.

H. Onsite Wells. Olin Corporation currently maintains several extraction and monitoring wells, pipelines and related equipment on the PREMISES through an encroachment permit issued by CITY. MHCG shall avoid the wells and equipment in its operation of the garden, and further shall not build, obstruct or otherwise encroach upon the area surrounding the wells and equipment. MHCG shall be responsible for any action due to its operations that impact or interfere with the wells and equipment. Exhibit C depicts the approximate location of Olin Corporation facilities on the site.

SECTION 3. MAINTENANCE AND REPAIR

A. “As Is”: MHCG acknowledges that it is agreeing to a LICENSE of the PREMISES on an “as is” basis.

B. Maintenance and Operating Standards: During all periods that the PREMISES are used or are under the control of the MHCG for the uses, purposes, and occupancy set forth in this LICENSE, MHCG shall maintain and operate the PREMISES and the GARDEN at its own expense, in compliance with law and, unless otherwise more specifically set forth. MHCG shall be responsible for all necessary janitorial duties and damage and maintenance repairs, to the satisfaction of the CITY. The cause of said cleaning and repairs may result from normal wear and tear, as well as vandalism.

C. Utilities: MHCG shall be responsible for utility charges. Charges may include, but are not limited to, deposits, installation costs (except as addressed in Paragraph 3.H), and all service charges for gas, electricity, water, and other utility services to PREMISES, and shall be paid by MHCG regardless of whether such utility services are furnished by CITY or by other utility service providers.

D. Trash: The CITY will add the site to the list of City facilities serviced by the City's franchised waste hauler and will instruct the hauler to provide the necessary receptacles. MHCG shall collect and place all trash on the PREMISES for trash haul collection in the receptacle.

E. Irrigation and Other Fixtures: MHCG shall maintain and operate all improvements, fixtures, irrigation system and utility systems which may now or hereafter exist on PREMISES, whether installed by CITY or MHCG. In all instances where damage to any utility service line is caused by MHCG, its volunteers, employees, contractors, sub-contractors, suppliers, agents, or invitees, MHCG shall be responsible for the cost of repairs and any and all damages occasioned thereby.

F. Correction of Conditions Leading to Damage: If MHCG fails, after written notice, to correct such conditions which have led or, in the opinion of CITY, could lead to significant waste or damage to CITY property, the Public Services Director of the CITY may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such property included in said notice, with the cost thereof, to be paid by MHCG to CITY on demand.

G. Property Damage and Theft Reporting: MHCG shall report to the CITY in writing in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES.

H. Damage or Destruction to PREMISES: If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, CITY shall be under no obligation, but may choose, to repair, replace or reconstruct said PREMISES to the same extent and of equal quality as obtained by MHCG at the commencement of its operations hereunder. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, MHCG may terminate this LICENSE in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a portion thereof, are damaged or destroyed as a result of the negligent acts or omissions of MHCG, its agents, officers, volunteers, or employees, the CITY may, in its discretion, require MHCG to repair and reconstruct the same

within twelve (12) months of such destruction and MHCG shall be responsible and pay for the cost and expenses incurred in making such repairs.

I. Fencing/Gate. MHCG shall maintain and keep in good repair the fence and gate; provided however that if the fence or gate is damaged by an identified responsible party other than MHCG, its member, employee, invitee or guests, then the CITY shall repair any such damage. MHCG shall be responsible for the locking and unlocking of the gate.

J. Pest Control: Unless otherwise specified in the LICENSE, MHCG shall be responsible for pest control as reasonably necessary in and around the PREMISES including but not limited to, abatement of nuisance-level populations of insects, spiders, rodents, vermin, and other nuisance pests, if these pests are found in or on structures or areas used and maintained by MHCG.

SECTION 4. IMPROVEMENTS

MHCG shall be responsible and pay all costs of necessary improvements, fixtures and other construction necessary to construct and establish the GARDEN. Prior to work on any such improvement, MHCG shall submit to the Director of Public Services of the CITY a site plan showing all intended improvements and such improvements shall be subject to the approval of the Director of Public Services.

SECTION 5. LIABILITY

A. Indemnification:

1. Except for the active negligence or willful misconduct of CITY, MHCG undertakes and agrees to defend, indemnify and hold harmless CITY, and any and all of their officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including MHCG'S, volunteers, employees, agents, guests or invitees, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this LICENSE or the entry and use of the PREMISES.

B. Waiver of Defective Conditions: MHCG hereby expressly waives all claims for compensation, for any and all loss or damage by reason of any defect, deficiency, or impairment of the conditions or fixtures on the PREMISES; and MHCG hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.

C. Insurance Required. MHCG 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 MHCG, including liability for damage or injury to the property or person (including death) of any MHCG or invitee of MHCG or any other person entering upon

or using the Premises, or any structure thereon, or any part thereof, and arising from MHCG's use and occupancy thereof, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any self-insured retentions must be declared to and approved by City. MHCG further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to MHCG, at any time as deemed necessary to protect the interests of City.

4.1. Insurance Types and Amounts.

4.1.1. Commercial General Liability (CGL). MHCG 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 five hundred thousand dollars (\$500,000.00) for property damage, or (ii) the maximum amount of such insurance available to MHCG under MHCG's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

4.1.2. Workers' Compensation Insurance and Employer's Liability. MHCG 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 MHCG under MHCG's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If MHCG is self-insured, MHCG shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

4.1.3. Property. MHCG shall maintain Property Insurance to cover MHCG's personal property, including structures, furniture, and fixtures, at an amount equal to the full replacement cost of such property. Such coverage shall include protection against fire, theft, vandalism, sprinkler leakage, malicious activity, and all other forms of loss ("all-risk" coverage). MHCG may elect to self-insure MHCG's personal property by written notice given to CITY.

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

4.2.1. General Liability.

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

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

4.2.1.3. insurance shall be primary non-contributing.

4.2.2. Workers Compensation.

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

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

4.4. Certificates. MHCG shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

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

SECTION 6. PROHIBITED ACTS

MHCG shall not:

A. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of the Public Services Director of the CITY, nor assign the LICENSE nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the LICENSE nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the license rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the LICENSE or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrancer, pledgee or other lien holder, successor or purchaser.

B. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the LICENSE, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of Public Services Director of the CITY, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the LICENSE, provided,

however, that nothing contained herein shall preclude MHCG from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

C. Use, create, store or allow any hazardous materials as defined as any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude MHCG from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws. Without limiting any other requirement or obligation of MHCG under this LICENSE, if MHCG needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, MHCG agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this LICENSE, MHCG shall provide CITY with a complete list of the hazardous materials MHCG reasonably anticipates it may need to use to provide the services of MHCG under this LICENSE, together with the reasonably anticipated quantities thereof, if requested by CITY.

D. Use of the PREMISES in any manner that will constitute waste;

SECTION 7. INDEPENDENT CONTRACTORS / CONSULTANTS

MHCG is acting hereunder as an independent contractor and not as an agent or employee of the CITY. The MHCG shall not represent or otherwise hold itself or any of its directors, officers, partners, volunteers, employees, or agents to be an agent or employee of the CITY.

SECTION 8. TAXES, PERMITS. AND LICENSES

MHCG shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the GARDEN including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.; and shall pay all taxes, fees or permit charges that may be levied or charged upon the rights of MHCG to use the PREMISES, or upon MHCG'S improvements, fixtures, equipment, or other property thereon or upon MHCG'S operations hereunder. MHCG recognizes and understands that this license may create a possessory interest subject to property taxation and that MHCG may be subject to the payment of property taxes levied on such interest.

SECTION 9. REGULATIONS, INSPECTION, AND DIRECTIVES

A. The operations conducted by MHCG pursuant to the LICENSE shall be subject to:

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the GARDEN
2. Any and all orders, directions or conditions issued, given, or imposed by Public Services Director of the CITY with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the Morgan Hill Municipal Code, and of any governmental authority, federal, state or municipal, lawfully exercising authority over the MHCG'S operations; and,
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons, including the Americans with Disabilities Act.

B. Right of Inspection:

CITY and the Public Services Director of the CITY, their authorized representatives, agents and employees shall have the right to enter upon the PREMISES at any and all reasonable times for the purpose of inspection, evaluation, and observation of MHCG'S operation.

SECTION 10. TERMINATION UPON DEFAULT

A. CITY may, by written notice, terminate the LICENSE in its entirety and all rights ensuing therefrom as provided by applicable law if any one or more of the following events of default occur:

1. MHCG fails to keep, perform and observe any promise, covenant and condition set forth in the LICENSE on its part to be kept, performed or observed and MHCG fails to perform within seven (7) days after the receipt of written notice from the CITY, or, where fulfillment of MHCG'S obligation requires activity over a period of time, MHCG fails to commence to perform whatever may be required within seven (7) days after receipt of such notice or fails to continue such performance until the obligation is met;
2. The interest of MHCG under the LICENSE is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of the CITY;

3. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of ten (10) days and which does, or as a direct consequence of such process will, interfere with MHCG'S use of the PREMISES or with its operations under the LICENSE;
4. MHCG becomes insolvent, files for bankruptcy or a petition for bankruptcy is filed against MHCG;
5. Any lien is filed against the PREMISES because of any act or omission of MHCG and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ten (10) days; or
6. MHCG voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized.

B. Waiver of Redemption and Damages:

MHCG hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event CITY obtains or retains possession of the PREMISES in any lawful manner. MHCG further agrees that in the event the manner or method employed by CITY in reentering or regaining possession of the PREMISES gives rise to a cause of action by MHCG due to forcible entry and detailed under the laws of the State of California, the total amount of damages to which MHCG shall be entitled in any such action shall be the sum of One Dollar (\$1). MHCG agrees that this provision may be filed in any such action as its stipulation fixing the amount of damages to which it is entitled.

SECTION 11. SURRENDER OF POSSESSION, WAIVER OF RELOCATION EXPENSE

A. MHCG agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration, revocation or earlier termination of the LICENSE promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by MHCG or CITY, normal use and wear and tear thereof excepted. No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and MHCG. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by MHCG under the LICENSE.

B. MHCG shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the PREMISES within thirty (30) days of the expiration or earlier termination of the LICENSE. If MHCG fails to remove said property within that thirty (30) days, said property shall be considered abandoned and CITY may dispose of same as it sees fit.

C. MHCG shall not be entitled to and hereby waives any right to relocation payments or moving expense pursuant to Chapter 16 of the California Government Code (Section 7260 et. seq.) or any other laws, and any right to compensation for loss of good will pursuant to California Code of Civil Procedure Section 1263.510 or any other laws.

SECTION 12. WAIVER

A waiver of a default of any part, term, or provision of the LICENSE shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

SECTION 13. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants or conditions of the LICENSE due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, or any other circumstance for which such party is not responsible and which is not in its power to control.

SECTION 14. REMEDIES ARE NON-EXCLUSIVE

No right, power, remedy, or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of said rights, powers, remedies, or privileges shall be deemed cumulative and additional and not in lieu or exclusive of each other or of any other remedy available to CITY at law or in equity.

SECTION 15. LAW OF CALIFORNIA APPLIES

The LICENSE shall be enforced and interpreted under the laws of the State of California. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

SECTION 16. 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.

A. To CITY:

Unless otherwise stated in the LICENSE, written notices to CITY hereunder shall be addressed to:

City Manager
 17575 Peak Avenue
 Morgan Hill, CA 95037
 408-779-7271

And

Department of Community Services
 Attn: Public Services Director
 17575 Peak Avenue
 Morgan Hill, California, 95037

B. To MHCG:

Written notices to MHCG shall be addressed as follows:

President
 MHCG
 P. O. Box 1862
 Morgan Hill, CA 95038

and:
info@mhcommunitygarden.org

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SECTION 17. LICENSE CONTAINS ENTIRE AGREEMENT

The provisions of the LICENSE contain the entire agreement between the parties hereto and said LICENSE may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and MHCG.

IN WITNESS WHEREOF, THE CITY OF MORGAN HILL has caused this LICENSE to be executed on its behalf by its duly authorized representative and MHCG has executed the same as of the day and year herein below written. Those individuals who are signing this LICENSE 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 LICENSE.

CITY OF MORGAN HILL

MORGAN HILL COMMUNITY GARDEN

City Manager

Date: _____

ATTEST:

City Clerk

Date: _____

APPROVED:

Risk Manager

Date: _____

APPROVED AS TO FORM:

Date: _____

By:

Title: _____

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

Date: _____

By:

Title: _____

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

Date: _____

City Attorney

_____ : _____

Exhibit A: LEGAL DESCRIPTION OF THE PREMISES

The Community Garden is located in the northwest triangular portion of APN 817-07-007 that is defined as the area bordered by Butterfield Blvd., Railroad Ave., and APN 817-08-039. The address is 15690 Railroad Ave., Morgan Hill, CA 95037. This defined area is approximately two acres.

EXHIBIT B: SITE MAP

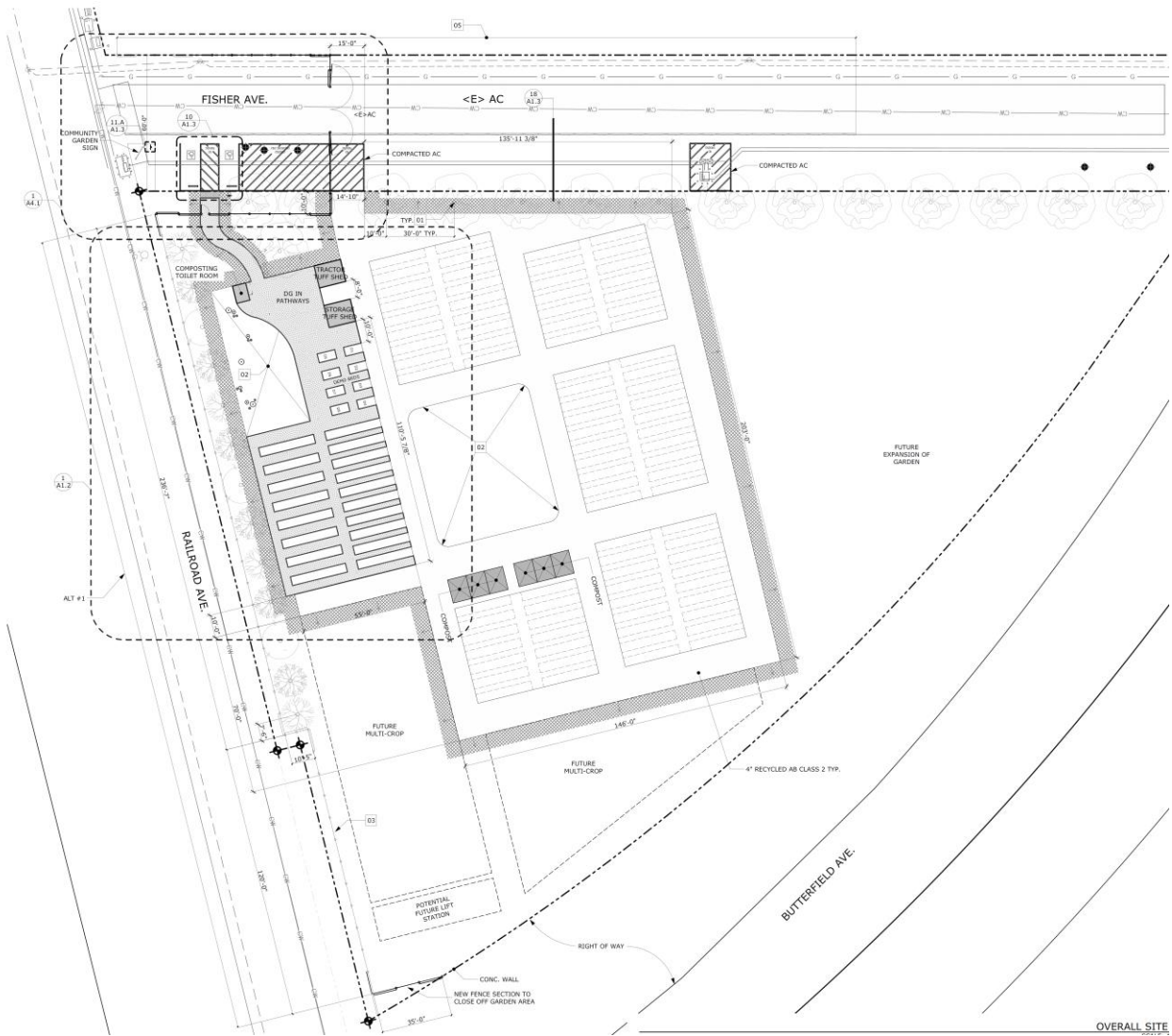
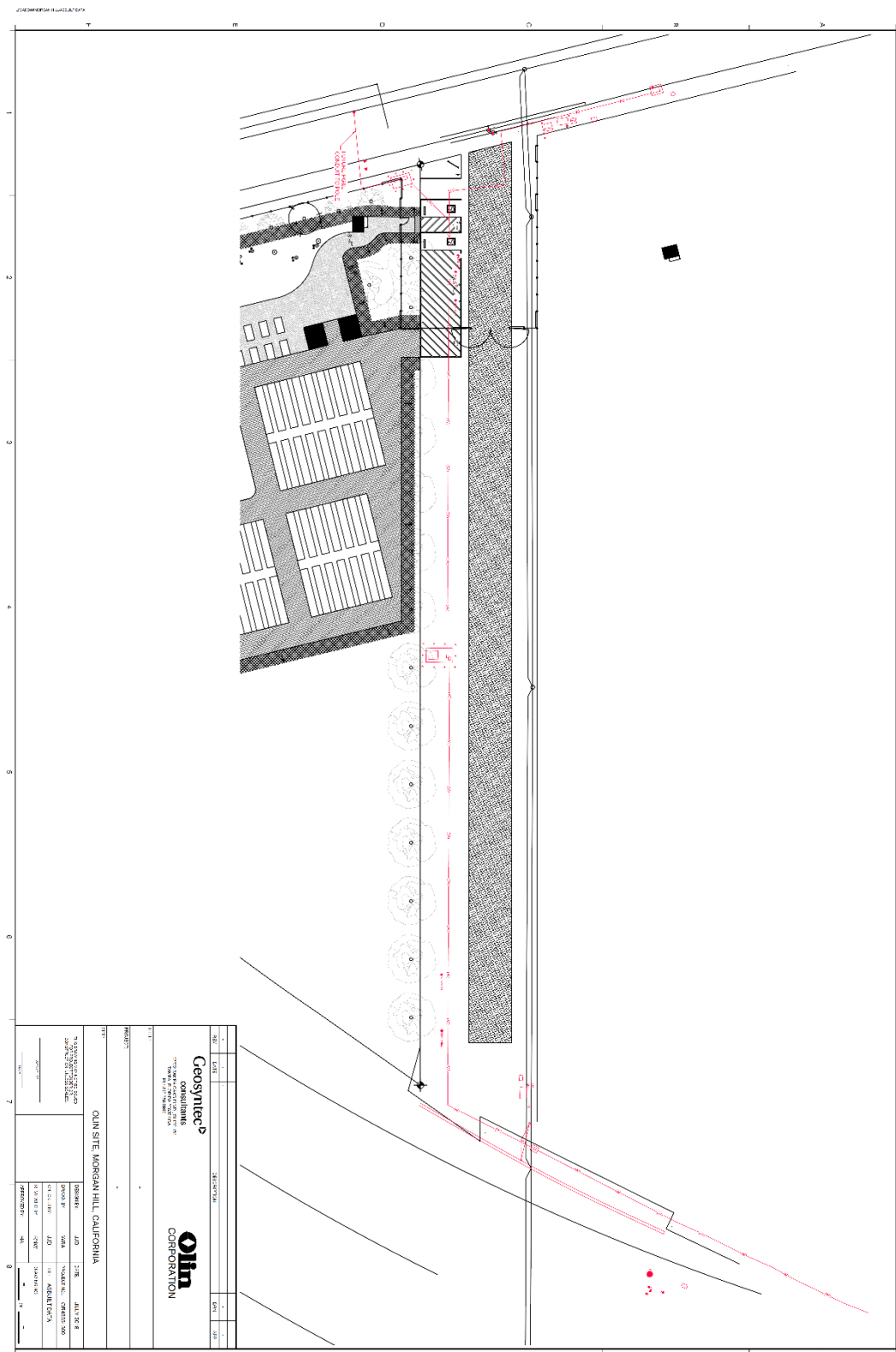


Exhibit C: OLIN CORPORATION FACILITIES



signed agreement pending

Attachment: signed agreement pending (2666 : Community Garden License)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Adam Paszkowski, Principal Planner

APPROVED BY: No

APPROVAL OF A CONSULTANT AGREEMENT WITH LISA WISE CONSULTING, INC. (LWC) FOR PREPARATION OF THE MONTEREY CORRIDOR FORM-BASED CODE

RECOMMENDATION(S)

1. Adopt resolution amending the City's Fiscal Year 2019-20 budget to recognize \$160,000 as Senate Bill 2 – Building Homes and Jobs Act planning grant revenue and appropriate \$170,720 as expenditure in the Long-Range Planning Fund (207) for preparation of the Monterey Corridor Form-Based Code; and
2. Approve and authorize the City Manager to execute and administer a Consultant Agreement with Lisa Wise Consulting, Inc. (LWC) for a not to exceed amount of \$170,720.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving Our Community History
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Economic Development
Housing

GUIDING DOCUMENTS

Downtown Specific Plan
General Plan/Housing Element

REPORT NARRATIVE:

The purpose of the proposed consultant agreement (Attachment 1) with Lisa Wise Consulting, Inc. (LWC) to prepare a Form-Based Code for the Monterey Road Corridor is to fulfill the vision in the Morgan Hill 2035 General Plan, adopted in July 2016, to transform the Monterey Road corridor north and south of Downtown from its current predominantly strip commercial character to a vibrant mixed-use corridor that encourages walking and biking with buildings fronting onto the street and a range of commercial and office uses located in close proximity to new and existing residential development.

In January 2017, the City of Morgan Hill contracted with LWC for the preparation of a market and land use capacity study for the Monterey Road corridor. The Market Analysis Report (Report) (Attachment 2) provided a summary of demographic and socio-economic conditions in the City of Morgan Hill as they relate to economic performance, as well as a high-level analysis of the commercial market, and a land use capacity assessment for the corridor. The Report was used to inform the development

of implementation plan options for the Monterey Corridor. The Market Analysis indicated, among other key findings, that the Monterey Corridor has a theoretical market demand of 215,000 square feet of commercial (retail and office) with development capacity for between 150 and 890 residential units.

The Report summarized five options:

- 1.1 Comprehensive Form-Based Code;
- 1.2 Scaled-Down Form-Based Code;
2. Conventional Code with Updates to Standards;
3. Specific Plan for the Study Area;
4. Guidelines for “Block-Level Master Plans”; and,
5. Streetscape Improvement Plan and a Façade Incentive Program.

As indicated by LWC, the two form-based code options (1.1 Comprehensive Form-Based Code and 1.2 Scaled-Down Form-Based Code) would, in their experience, be most effective in helping to realize the General Plan’s vision for the Monterey Corridor.

On April 4, 2018, City Council discussed the Monterey Corridor Study Report, Implementation Memo, and Planning Commission’s recommendations. Several implementation measures were discussed, and staff was directed at that time to proceed with the preparation of a Block-Level Master Plan (BLMP) for the Monterey Road corridor, which would fulfill the General Plan requirement that such a plan be adopted prior to development of residential or mixed-use projects within the Mixed-Use Flex land use designation. Block-Level Master Plans for Monterey Corridor Block One and Monterey Corridor Block Four were approved by the City Council on February 6, 2019. The Block-Level Master Plan also served as the foundation for a future Monterey Corridor Form-Based Code or Specific Plan.

The Form-Based Code will be the basis for a future Specific Plan. Looking further down the road, the Form-Based Code and the Downtown Priority Development Area (PDA) expansion will position the City to obtain additional grant funding to complete a Specific Plan for the Monterey Road Corridor.

On November 20, 2019, City Council authorized staff to prepare and submit the 2019 Planning Grants Application in the amount of \$160,000 for the development of a Form-Based Code for the Monterey Road Corridor. On January 23, 2020, the City of Morgan Hill was notified by the State of California Department of Housing and Community Development (HCD) that the City had been preliminarily approved for \$160,000 from the 2019 Planning Grants Program. On February 24, 2020, the City received formal approval of the \$160,000.

COMMUNITY ENGAGEMENT: Collaborate

A public stakeholder meeting was held on June 15, 2017 to gather local input regarding the priorities, preferences, challenges and opportunities along the Monterey Road Corridor in the City of Morgan Hill. Approximately 20 stakeholders attended and participated in a group exercise.

A meeting was held on November 8, 2017 with a panel of retail experts and members of the public to discuss the evolving retail landscape.

The February 27, 2018 Planning Commission meeting was open to the public with an opportunity for community members to provide feedback.

Additional opportunities to engage the community will occur during the development of the Form-Based Code planning process. In addition, adoption of a Form-Based Code will include noticed Planning Commission and City Council public hearings.

ALTERNATIVE ACTIONS:

The City Council could direct staff to not pursue the proposed consultant agreement and direct staff to bring back a proposed consultant agreement for preparation of a Form-Based Code and/or a Specific Plan at a future time and forfeit the \$160,000 grant awarded by the 2019 Planning Grants Application.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 27, 2018 – Planning Commission reviewed and discussed the Monterey Corridor Analysis Report and Implementation Options Memo and recommended both a near-term (Block-Level Master Plan) and long-term implementation option (Specific Plan) for City Council consideration.

On April 4, 2018 – City Council considered and supported the Planning Commission recommendation to prepare a near-term Block-Level Master Plan for the Monterey Corridor that would serve as the foundation for a future Specific Plan.

On July 25, 2018 – City Council approved a consultant agreement with Lisa Wise Consulting and scope of work/budget for preparation of a Block-Level Master Plan.

On October 17 and 24, 2018 – City Council and Planning Commission held a workshop to discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor and to discuss and provide feedback on the results and recommendations of a block-level commercial analysis.

November 28, December 5 and 19, 2018 – City Council meetings to discuss next steps in master planning for the Mixed-Use Flex designated portions of the Monterey Corridor.

January 22, 2019 – Planning Commission Study Session and Public Hearings on ZA2019-0001 Monterey Corridor Block One and ZA2019-0002 Monterey Corridor Block Four.

February 6, 2019 – City Council adopted zoning amendment for ZA2019-0001 Monterey Corridor Block One and ZA2019-0002 Monterey Corridor Block Four.

November 20, 2019 – City Council adopted resolution authorizing staff to prepare and submit the 2019 Planning Grants Application in the amount of \$160,000 for the development of a Form-Based Code for the Monterey Road Corridor.

FISCAL AND RESOURCE IMPACT:

Limited staff resources from the Development Services Department are required and expected to be accommodated within the existing workplan. The City has been approved for \$160,000 from the 2019 Planning Grants Program from the State of California, Department of Housing and Community Development for the development of a Form-Based Code for the Monterey Road Corridor. The grant is a reimbursement formula, meaning the City must front the costs and then expense phases of work to the State for reimbursement. The Scope of Work budget from LWC is \$155,200. A ten percent contingency, in the amount of \$15,520, brings the total Scope of Work budget to \$170,720. The contract will be an expenditure of the Long- Range Planning Fund (207). The expenditure was not anticipated in the adopted FY 2019-20 budget and therefore necessitates a budget amendment (Attachment 3).

CEQA (California Environmental Quality Act):

Statutory Exemption.

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

LINKS/ATTACHMENTS:

1. City Standard Consultant Agreement - LWC Form Based Code
2. Monterey Corridor Market Analysis
3. Resolution

CONSULTANT AGREEMENT LISA WISE CONSULTING, 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 LISA WISE CONSULTING, INC. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until July 31, 2021 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be preparation of the Monterey Corridor Form-Based Code as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$170,720.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Seventy Thousand Seven Hundred Twenty 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:

Lisa Wise Consulting, Inc.
983 Osos Street
San Luis Obispo, CA 93401

Address of CITY is as follows:

Adam Paszkowski	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:

LISA WISE CONSULTING, INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

Lisa Wise, President, CEO

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 02/12/20

By: _____

Henry Pontarelli, Vice President, Secretary

Print Name and Title of Signer.

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

Date: 02/12/20

**EXHIBIT A
SCOPE OF SERVICES**

Scope of Work

Monterey Corridor Form-Based Code

City of Morgan Hill

Prepared by Lisa Wise Consulting, Inc. (LWC)

November 22, 2019

Task 1: Background Review, Analysis, and Recommended Approach

- A. **Project Initiation Meeting and Document/Data Request.** LWC will prepare for and attend one project initiation meeting with City staff (Trip 1). At the project initiation meeting, LWC will review the project timeline and scope of work, confirm project goals, objectives, and the study area (parcels adjacent to Monterey Road excluding the Downtown Specific Plan area), and provide an overview of form-based code (FBC). The team will also discuss any background documents that may be applicable to the FBC, including recent amendments to the Zoning Code, key policies from the 2035 General Plan, the Downtown Specific Plan, the Administrative Draft Monterey Corridor Overlay Zone, and/or other relevant information. City staff will provide the discussed documents and data after the project initiation meeting.
- B. **Microscale Analysis and Zoning Evaluation.** Building on the work completed during the Block Level Master Plan and Administrative Draft Monterey Corridor Overlay Zone process, LWC will document block and lot development patterns in three pre-identified areas along Monterey Corridor during Trip 1. LWC's evaluation of this data will inform the development of form-based standards that account for existing urban patterns and unique features in the City. Additionally, LWC will conduct an evaluation of the General Plan and Zoning Code, and their potential impediments to development. In reviewing the Zoning Code, LWC will primarily focus on analyzing the zoning districts applicable to the Monterey Corridor, including the Mixed Use Flex (MU-F), Neighborhood Mixed Use (MU-N), General Commercial (GC), and Residential Attached Low Density (RAL) zoning districts.
- C. **Form-Based Code Impediments and Recommendations Memo.** Based on LWC's technical review of development patterns, relevant documents/data, and the Zoning Code, LWC will prepare a Form-Based Code Impediments and Recommendations Memo. The Memo will highlight policy direction for form-based standards, assess the existing Zoning Code's impediments to development, and present recommendations for the FBC approach and integration into the existing Zoning Code (e.g., replacing the existing base zoning districts with form-based zoning districts). LWC will provide one administrative draft Memo to the City for review and comment. LWC will incorporate all nonconflicting, actionable, and consolidated City staff comments and prepare a public review draft Memo, which will be presented at Workshop 1 (see Task 2) and finalized based on the approach discussed at the Workshop.

- D. **Annotated Form-Based Code Outline and Style Guide.** Based on City staff comments on the Form-Based Code Impediments and Recommendations Memo and input gathered at Workshop 1 (see Task 2), LWC will prepare an Annotated Outline of the FBC. The outline will provide the recommended format, content, and organization of the Form-Based Code. LWC will also prepare a Style Guide for the FBC, summarizing fonts, colors, verbiage, and indentation levels anticipated to be used in the document.

Meetings

- Project Initiation Meeting and Microscale Analysis (Trip 1)

Deliverables

- Project Initiation Meeting agenda (Word, PDF)
- Form-Based Code Impediments and Recommendations Memo (Word, PDF)
- Annotated Form-Based Code Outline (Word, PDF)

Task 2: Workshop 1 – Project Introduction and Recommended Approach

LWC will conduct one Planning Commission/community workshop (Trip 2) to introduce the project, discuss objectives, provide an overview of FBCs, and present the recommended approach identified in the Form-Based Code Impediments and Recommendations Memo. The workshop will include a PowerPoint presentation describing background and context, including information from the General Plan, Monterey Corridor Market and Capacity Study, and other applicable plans. The intent of this workshop is to gather input on the recommended FBC approach so that the team can move forward with community and Planning Commission buy-in at the onset of the project.

LWC will provide a summary of the workshop. The City will be responsible for securing a meeting space, noticing, and distributing outreach materials.

Meetings

- Workshop 1 – Project Introduction and Recommended Approach (Trip 2)

Deliverables

- Draft presentation and group discussion materials (PowerPoint)
- Final presentation and group discussion materials (PowerPoint)
- Workshop summary notes (Word, PDF)

Task 3: Administrative Draft Form-Based Code

LWC will develop an Administrative Draft Form-Based Code in two phases as described below. Each phase will be based on the Annotated Outline and reflective of the analysis, review, and input gathered in Tasks 1 and 2. Both phases will include coordination with, and review by, City staff. Collectively, the

phases will comprise the complete Administrative Draft. LWC will coordinate with the City's Project Manager via phone as needed to prepare the Public Hearing Draft Form-Based Code.

- A. **Administrative Draft Phase 1:** Applicability and Intent, Transect Zones, Development Standards and Building Placement Standards, Use Tables and Use Definitions, Regulating Plan.
- B. **Administrative Draft Phase 2:** Frontage Standards, Civic Space Standards, Procedures (anticipated to rely on existing Zoning Code procedures where appropriate).

The FBC will include up to three transect zones applicable to Monterey Corridor. The FBC will not include nor apply to the area established in the Downtown Specific Plan. LWC will create the FBC in InDesign.

Deliverables

- Administrative Draft Form-Based Code Phase 1 (PDF)
- Administrative Draft Form-Based Code Phase 2 (PDF)

Task 4: Public Drafts of the Form-Based Code

- A. **Public Review Draft.** LWC will prepare a Public Review Draft Form-Based Code based on a consolidated set of actionable comments from City staff review of the Administrative Draft. LWC will coordinate with the City's Project Manager via phone as needed to prepare the Public Review Draft Form-Based Code. The Public Review Draft will be compiled into a single document (phased approach will no longer be necessary), which will be made available for public distribution. LWC will present the Public Review Draft Form-Based Code at Workshop 2 (see Task 5).
- B. **Public Hearing Draft.** LWC will review comments on the Public Review Draft Form-Based Code with City staff and prepare a Public Hearing Draft Form-Based Code. LWC will prepare for and attend one primary teleconference to discuss comments on the Public Review Draft Form-Based Code and coordinate with the City's Project Manager via telephone as needed to prepare the Public Hearing Draft Form-Based Code. Upon completion of the Public Hearing Draft Form-Based Code, LWC will provide the InDesign source files of the document to City staff.
- C. **Regulating Plan Revisions.** If necessary and appropriate LWC will work with City staff to identify areas of the Regulating Plan that require revisions resulting from the public comment.

Meetings

- Public Hearing Draft Teleconference

Deliverables

- Public Review Draft Form-Based Code (PDF)
- Public Hearing Draft Teleconference agenda (Word, PDF)
- Public Hearing Draft Form-Based Code (InDesign, PDF)

Task 5: Workshop 2 – Public Review Draft Rollout and Education

LWC will conduct one public workshop (Trip 3) to discuss the project process to-date and rollout the Public Review Draft Form-Based Code to the community. The workshop will include a PowerPoint presentation describing background, context, and project objectives, as well as an overview of where the FBC applies in the City and its organization and tools. The intent of this workshop is to provide an educational opportunity to community members and elected/appointed officials, in order to facilitate effective and grounded comments and review by the public.

LWC staff members will facilitate small group discussions and produce materials to facilitate group discussion (e.g., questionnaire, handout, flip charts, etc.). Draft workshop material will be provided for City staff review, then LWC will prepare final workshop materials based on City staff comments. Any large-scale maps for the workshop will be produced by the City.

LWC will provide a summary of the workshop. The City will be responsible for securing a meeting space, noticing, and distributing outreach materials.

Meetings

- Workshop 2 – Public Review Draft Rollout and Education (Trip 3)

Deliverables

- Draft presentation and group discussion materials (PowerPoint)
- Final presentation and group discussion materials (PowerPoint)
- Workshop summary notes (Word, PDF)

Task 6: Final Form-Based Code

LWC will coordinate with and provide guidance to City staff to prepare a final Form-Based Code. City staff will be responsible for all formal presentations to, and hearings with, Planning Commission and City Council.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Prepared by Lisa Wise Consulting, Inc.

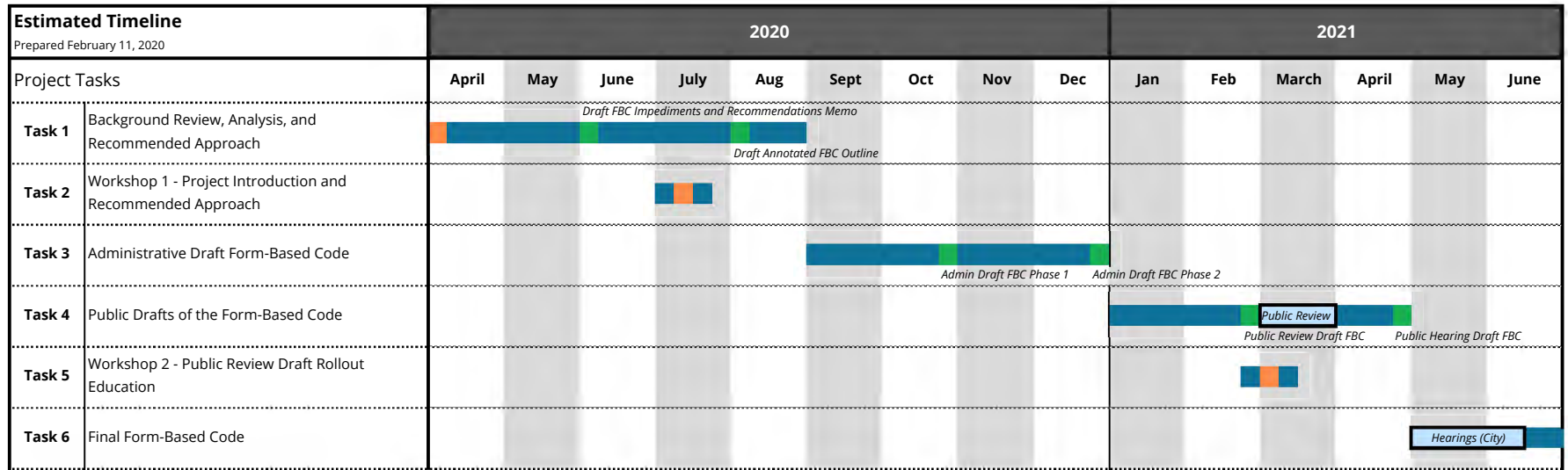
22-Nov-19

		City of Morgan Hill, Form-Based Code									
		LWC									
		President		Director		Senior		Associate			
		\$275		\$205		\$180		\$145			
		Hours	Fee	Hours	Fee	Hours	Fee	Hours	Fee	Hours	Fee
TASK 1	Background Review, Analysis, and Recommended Approach										
		6	\$ 1,650	22	\$ 4,510	70	\$12,600	172	\$24,940	270	\$ 43,700
TASK 2	Workshop 1 - Project Introduction and Recommended Approach										
		6	\$ 1,650	-	\$ -	10	\$ 1,800	16	\$ 2,320	32	\$ 5,770
TASK 3	Administrative Draft Form-Based Code										
		12	\$ 3,300	36	\$ 7,380	90	\$16,200	220	\$31,900	358	\$ 58,780
TASK 4	Public Drafts of the Form-Based Code										
		6	\$ 1,650	20	\$ 4,100	56	\$10,080	120	\$17,400	202	\$ 33,230
TASK 5	Workshop 2 - Public Review Draft Rollout and Education										
		8	\$ 2,200	-	\$ -	16	\$ 2,880	32	\$ 4,640	56	\$ 9,720
TASK 6	Final Form-Based Code										
		-	\$ -	4	\$ 820	8	\$ 1,440	12	\$ 1,740	24	\$ 4,000
	Project Total	38	\$10,450	82	\$16,810	250	\$45,000	572	\$82,940	942	\$ 155,200
	Contingency (10%)										\$ 15,520
	Total with Contingency										\$ 170,720

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Monterey Corridor Form-Based Code

City of Morgan Hill



 Trip
 Key Deliverable

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 BUDGET IN THE LONG RANGE PLANNING FUND (207) TO APPROPRIATE \$170,720 FOR THE MONTEREY CORRIDOR FORM-BASED CODE, THEREFORE

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

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approval of a Consultant Agreement with Lisa Wise Consulting, Inc. (LWC) for Preparation of the Monterey Corridor Form-Based Code" submitted for City Council consideration at its meeting of March 4, 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 on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 4th day of March 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. 20-0XX, adopted by the City Council at the meeting held on the 4th day of March 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 #

018

FUND:

207 Long Range Planning Fund

DEPARTMENT:

5170 Long Range Planning Fund

OBJECT:

42231 CONTRACT SERVICES

AGENDA DATE:

03/04/20

AGENDA ITEM TITLE:

Monterey Corridor Form-Based Code

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,248,188	736,371	736,054	1,248,505
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	110,000	(110,000)
RECOMMENDED ACTION		160,000	170,720	(10,720)
RESULT OF RECOMMENDED ACTION	<u>1,248,188</u>	<u>896,371</u>	<u>1,016,774</u>	<u>1,127,785</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Adam Paszkowski, Principal Planner

APPROVED BY: No

APPROVAL OF A CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR)

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. for preparation of the Annexation Environmental Impact Report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure
Preserving and Cultivating Public Trust

GUIDING DOCUMENTS

General Plan/Housing Element
Sewer System Master Plan

REPORT NARRATIVE:

The purpose of the proposed consultant agreement (Attachment 1) with David J. Powers & Associates, Inc. (DJPA) is to fulfill the City's obligation, under the February 1, 2017 Settlement Agreement (Attachment 2) with the Santa Clara County Local Agency Formation Commission (LAFCO), to prepare and certify an Environmental Impact Report (EIR) prior to any decision to initiate a project that includes an amendment to the City's Urban Service Area (USA) or annexation of property outside the City's Urban Growth Boundary (UGB).

A consultant agreement with David J. Powers & Associate was approved on May 2, 2018 to complete this project (Attachment 3), however due to delays in data analysis and other workload matters, the existing agreement expired on June 30, 2019.

Attached for Council's consideration is a new consultant agreement with DJPA in an amount not to exceed \$219,000; of this amount, \$52,110 was expended under the expired agreement, leaving \$166,890 to complete the work. Because this contract is intended to replace the prior contract, the overall amount of the contract was not

changed. The scope and schedule for the preparation of the Annexation EIR is attached to the consultant agreement.

Background on Settlement Agreement

On July 27, 2016, after considering and responding to all comments received, the City Council certified the Morgan Hill 2035 Environmental Impact Report (MH2035 EIR) and adopted the Morgan Hill 2035 General Plan.

On August 2, 2016, the City filed a Notice of Determination (NOD) regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the MH2035 EIR. Filing the NOD started a 30-day statute of limitations for bringing an action to set aside certification of the MH2035 EIR.

On August 25, 2016, LAFCO and the City of Morgan Hill entered, and subsequently extended, a tolling agreement to toll the statute of limitations for LAFCO to bring a challenge to the MH2035 EIR.

On February 1, 2017, LAFCO and the City entered into a Settlement Agreement to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the MH2035 EIR.

Under the terms of the Settlement Agreement the City is obligated to conduct environmental review under the California Environmental Quality Act (CEQA) resulting in the preparation and certification of an Environmental Impact Report (Annexation EIR) prior to any decision as to whether to initiate and carry-out a project concerning Urban Service Area (USA) amendments and/or annexation of property located within the City's Urban Growth Boundary (UGB) as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan.

Projects within the USA (e.g., City conducted annexations) may rely on and tier off of the MH2035 EIR.

The Settlement Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR (e.g., Citywide Agriculture Preservation Program and Southeast Quadrant Land Use Plan EIR) as the basis for submitting an annexation application to LAFCO.

In order to show good faith compliance with the Settlement Agreement, City staff recommends moving forward with the Annexation EIR. There are no anticipated or pending projects that require certification of the Annexation EIR, but its completion will serve to ratify the UGB shown in the 2035 General Plan.

COMMUNITY ENGAGEMENT: Inform

Throughout the Environmental Impact Report (EIR) process there will be several opportunities for formal and informal community participation beginning with the Notice

of Preparation (NOP) and EIR public Scoping Meeting; followed by posting of a Notice of Completion (NOC) and public circulation of the Draft EIR; and, concluding with noticed Planning Commission and City Council public hearings, and posting of a Notice of Determination (NOD).

ALTERNATIVE ACTIONS:

The Council may choose to not approve the proposed consultant agreement and direct staff to bring back a proposed consultant agreement for preparation of the Annexation EIR at a future time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 2, 2018 the City Council adopted a resolution approving and authorizing the City Manager to execute and administer a Consultant Agreement with DJPA for preparation of the Annexation EIR in the amount of \$219,000 and approving an amendment to the City's Fiscal Year 2017-2018 budget in the long range planning fund (Fund 207) to appropriate \$219,000.

FISCAL AND RESOURCE IMPACT:

Funds for the agreement are budgeted within the Long-Range Planning Fund (207) and are included in the adopted Biennial FY 2018-19 & FY 2019-20 Operating Budget.

CEQA (California Environmental Quality Act):

Not a Project.

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378, the selection of a consultant to prepare the Annexation EIR, which does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, does not qualify as a "project".

The following activities are specifically listed as not a project under Section 15378:

- (b)(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making;
- (b)(4) The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment;
- (b)(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. City Standard Consultant Agreement - DJPA Annexation EIR
2. Settlement Agreement with the Santa Clara County LAFCO
3. 2018 David J. Powers Associates 06 Orig Annexation EIR

CONSULTANT AGREEMENT DAVID J. POWERS & ASSOCIATES

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

1. **City Authority.** This Agreement is entered into pursuant to 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, 2021 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
 - 2.1. CITY and CONSULTANT previously entered into a CONSULTANT AGREEMENT dated May 24, 2018 for the same services, which expired by its own terms on June 30, 2019. CONSULTANT was unable to complete the work due to circumstances beyond its control.

3. **Scope of Service.** The services to be performed by CONSULTANT shall be preparation of the Annexation EIR as further described in **Exhibit A**. Certain portions of Task 1 were initiated but not completed during the term of the previous CONSULTANT AGREEMENT.

4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$219,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Nineteen Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. The overall budget for completion of the work remains the same as reflected in Exhibit B. Of this amount, CONSULTANT acknowledges receipt of \$52,110.21. 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:

David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Address of CITY is as follows:

Adam Paszkowski	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:

DAVID J. POWERS & ASSOCIATES, INC.

City Attorney

By:

Donald A. Larkin

Akoni Oshida, President

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

Date:

February 12, 2020

Martha Silveira

By:

Martha Silveira, C

Print Name and Title of Signer.

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

Date:

2/12/20

EXHIBIT A - SCOPE OF SERVICES



Morgan Hill Annexation Environmental Impact Report

May 4, 2018

Primary Contact

The primary David J. Powers & Associates, Inc. (DJP&A) contact for this project will be Mike Campbell. Mike's contact information is provided below.

Mike Campbell, AICP
Project Manager
David J. Powers and Associates
1871 The Alameda, Suite 200
San Jose, CA 95126
Direct: (408) 454-3425
Email: mcampbell@davidjpowers.com

Project Understanding

The project is the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary (UGB) as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System (RDSCS) until the year 2035. The Annexation EIR will include a full water supply assessment and an assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan. The geographic scope of the EIR includes unincorporated lands outside of the USA and within the UGB, but not including areas covered by the SEQ/Ag Preservation Certified EIR.

Scope of Services

DJP&A will prepare a program-level EIR for the proposed project that complies with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, and will meet the requirements of the City of Morgan Hill. The work elements will include preparation of an Administrative Draft EIR and Notice of Preparation, a Draft EIR and Notice of Completion, a Mitigation Monitoring and Reporting Program, and a Final EIR. These tasks are described below.

Task 1: Administrative Draft EIR and Notice of Preparation

Kick-Off Meeting and EIR Initiation

DJP&A will attend one EIR kick-off meeting with the City and the project team to discuss the project, further refine the EIR scope as needed, identify alternatives, and coordinate the scheduling and preparation of the EIR.

Project Description and Notice of Preparation

DJP&A will draft a project description and provide it to the City to review for accuracy. The project description will be based on project information to be provided by the City. A preliminary list of project information needed is included on page 11 of this scope of work. Once the project description is finalized, DJP&A will prepare the EIR NOP.

DJP&A will prepare the NOP for circulation by the City of Morgan Hill. The NOP will include a brief project description, project location map, and discussion of potential environmental effects of the project. This scope includes DJP&A attendance at one public EIR scoping meeting for the project. The text of the EIR will incorporate relevant issues raised in the responses to the NOP received during the 30-day NOP circulation period.

Preparation of Administrative Draft EIR

DJP&A will prepare an EIR consistent with the requirements of the California Environmental Quality Act (CEQA) and the City of Morgan Hill. The EIR will include an introduction, summary, project description, environmental setting, discussion of environmental impacts, and mitigation measures to reduce significant impacts.

Upon completion of the Administrative Draft EIR (ADEIR), DJP&A will submit up to 10 hard copies of the document to the City for review and comment, along with Word and pdf electronic copies.

The main sections of the EIR are described below.

Introduction

The introduction to the EIR will describe the purpose of the EIR, provide a general overview of the CEQA process, and describe the public participation process and opportunities for input.

EIR Summary

A summary of the EIR will include a brief description of the proposed project and identify the impacts of the project and proposed mitigation measures in tabular format. The summary will also briefly describe the project alternatives and address any known areas of public controversy.

Project Description

The project description prepared in Task 2 will be included in the EIR. The project description will also include a list of project objectives, necessary discretionary actions, and decision-making agencies. Maps and graphics will be provided to illustrate the text.

Existing Environmental Setting, Impacts, and Mitigation Measures

In accordance with CEQA Guidelines Section 15125, the EIR will clearly describe the development history and environmental setting for the proposed annexation sites and surrounding areas, and will emphasize any particularly sensitive environmental characteristics. The EIR will identify the thresholds/criteria for significance for each technical subject area. The technical reports described below will be attached as appendices to the EIR.

The EIR will assess the potential for the proposed project to result in significant impacts. All significant environmental impacts resulting from the project will be identified and illustrated graphically where appropriate (CEQA Guidelines Section 15126.2). The EIR will identify proposed and/or feasible mitigation and avoidance measures for all significant impacts resulting from the project. Mitigation measures included in the EIR will be monitorable, in accordance with the AB 3180 legislation pertaining to the monitoring or reporting of project mitigation. A brief description of the primary issues to be addressed in the EIR is provided below.

- **Consistency with Plans and Policies:** This section will discuss whether or not the proposed project is consistent with applicable land use controls, including local, regional, and statewide plans and policies, including LAFCO policies. Particular attention will be given to inconsistencies, if any are identified, and the likelihood that such inconsistencies might result in significant adverse environmental effects.
- **Aesthetics:** The EIR will qualitatively discuss the change in visual character for the areas proposed for annexation and USA expansion, based on foreseeable future growth according to the General Plan land use designations for those areas.
- **Agricultural Resources:** The project would convert farmland to residential or other non-agricultural uses. The EIR will evaluate the significance of this loss of farmland and identify program-level mitigation measures to reduce potential impacts. The EIR will review the programs and mitigations for the preservation of agricultural lands contained in the City's Southeast Quadrant project, and will address LAFCO's previously stated concerns, including recognizing their definition of farmland, which is more expansive than defined in CEQA.
- **Air Quality:** *Illingworth and Rodkin, Inc.* will prepare a report addressing the local and regional air emissions impacts of the full project build-out scenario based on the most recent methods for predicting air pollutant, greenhouse gas, and toxic air contaminant emissions from land use projects. The EIR will identify mitigations consistent with

applicable Bay Area Air Quality Management District (BAAQMD) requirements for significant impacts associated with Annexation development areas. Primary air quality issues would be the consistency of the annexation with the General Plan and most recent Clean Air Plan and effects of air pollutant sources upon sensitive receptors in the Annexation areas (e.g., new residences near the freeway). The EIR will discuss the location of proposed residential uses in relation to existing toxic air contaminant sources and odor sources based on existing information from the General Plan EIR, however, this is no longer considered a CEQA issue (per the *BIA v. BAAQMD* case), but is a planning/policy issue.

- **Biology:** The EIR will include a program-level analysis of existing biological resources within the proposed annexation areas. No site-specific surveys are proposed. The analysis of loss of habitats will be based on available Santa Clara Valley Habitat Plan land cover mapping. Parcel-specific surveys would be necessary in the future as individual projects are proposed for development.
- **Cultural:** As with Biological Resources, the EIR will include a program-level analysis of existing cultural resources within the proposed annexation areas, with no site-specific surveys proposed. The analysis of potential archaeological and historic impacts from development upon annexation to the City will be based on available cultural sensitivity mapping, the City inventory of historic resources, and the Santa Clara County Heritage Resource Inventory (South County). Parcel-specific literature searches, site investigations and cultural surveys would be necessary in the future as individual projects are proposed for development. In addition, the City will need to consult with interested tribes pursuant to SB 18 and AB 52.
- **Geology:** The EIR's discussion of existing geologic issues affecting areas to be annexed will be based on existing available information, including City and County published geologic hazards maps.
- **Greenhouse Gas Emissions:** *Illingworth & Rodkin, Inc.* will prepare a Greenhouse Gas Emissions Assessment that models operational GHGs from new growth in annexation areas. The computations would be based on land use development projections for existing (or baseline) and future build-out scenarios, including one other alternative development scenario. Traffic modeling conducted for the Annexation program would be incorporated into the analysis to accurately predict emissions and General Plan Update effects. Project description features that reduce GHG emissions will be incorporated into the modeling, and per capita emissions would be computed based on population and employment projections.
- **Hazardous Materials/Hazards:** The EIR's discussion of existing hazards and hazardous materials issues affecting areas to be annexed will be based on existing available information, including City and County hazard maps, and environmental databases maintained by public agencies, including DTSC and RWQCB.

- **Hydrology/Water Quality:** The majority of the proposed annexation areas (areas south of Cochran Road) drain to Monterey Bay and future new development within the watershed would be subject to applicable requirements of the Central Coast Regional Water Quality Control Board. For the remaining properties, which drain north to San Francisco Bay, future development would be subject to the San Francisco Bay Regional Water Quality Control Board regulations. New development will result in increased stormwater runoff generated by impervious surfaces, the effects of which would be addressed by local, regional and statewide regulatory programs. New development that occurs within floodplains must comply with established local and federal (FEMA) flood hazard requirements. No hydrology or hydraulic modeling is proposed for the EIR's program-level analysis; future annexation projects located within flood zones may be subject to flood studies.
- **Land Use:** The annexation of the proposed areas would not physically divide an established community. The EIR will address the land use implications of future development on those parcels, including conformance with General Plan goals and policies. The EIR will also address potential impacts of the annexation areas related to the City's growth management policies such as Measure S.
- **Noise/Vibration:** The EIR will discuss future roadway noise from new growth in annexation areas in combination with increased roadway volumes from growth within the existing City limits, based upon a comprehensive noise analysis to be prepared by *Illingworth & Rodkin, Inc.* Many of the annexation areas are exposed to elevated noise from US101 or high volume local roadways, but that is no longer a CEQA issue. The City noise policies still require that new housing be protected from significant noise sources. The EIR will discuss the exposure of future residents in proposed annexation areas based on the findings of *Illingworth & Rodkin's* report.
- **Population/Housing:** The EIR will address the proposed project's potential to directly or indirectly inducing substantial population growth in the City, displacement of substantial numbers of existing housing units or people, and the resulting construction of replacement housing elsewhere. It is assumed that growth within the proposed annexation areas would be subject to the limitations of Measure S, and that the project would therefore not induce an increased rate of growth, but would instead facilitate substantial overall levels of growth compared to what is planned within the City limits.
- **Public Services:** The EIR will address the potential need to construct new schools, parks, libraries, etc. to serve the proposed annexation areas or expand existing public facilities.
- **Transportation:** The EIR, based on a traffic impact analysis prepared by *Hexagon Transportation Consultants, Inc.*, will discuss traffic impacts to study intersections and freeway segments from new growth in the proposed annexation areas, as well as in

combination with increased roadway volumes from planned growth within existing City limits. The traffic analysis will follow guidelines set forth by the City of Morgan Hill and the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA), and will include a near-term (Year 2025) and long-term (General Plan Year 2035) evaluation of the potential traffic impacts due to the proposed land use growth of each of the subject annexation properties on the transportation system. Because the City of Morgan Hill currently uses Level of Service (LOS) as the primary analysis metric when evaluating the impacts of land use decisions on the transportation system, and in addition the Morgan Hill 2035 General Plan uses LOS as its primary metric for the projected operation of the City's roadway system, the traffic analysis will be based upon LOS analysis. The evaluation of the effects of the proposed annexations will also be supplemented with an evaluation of their effects on vehicle miles traveled (VMT) within the City.

The traffic analysis will be completed using the City of Morgan Hill traffic demand forecasting (TDF) model that was recently used by *Hexagon* to complete the General Plan update for the City. The analysis will include the evaluation of intersections and freeway segments during the AM and PM commute hours and average daily traffic (ADT) on roadway segments. Since each of the subject annexation properties are dispersed around the City boundaries, the analysis will study the same intersections, freeway segments, and roadway segments that were evaluated in the Morgan Hill 2035 General Plan traffic study. *Hexagon* will utilize and update, as needed, the latest City of Morgan Hill TDF model to develop forecasts for *Existing Conditions*, *Year 2025 (Existing Plus Project) Conditions*, and *Year 2035 General Plan Conditions with Annexations scenarios*.

- Utilities and Energy:** The conversion of the proposed annexation areas from rural residential and farmland to higher density residential, commercial and industrial uses would require the extension of utilities to the site to serve future development. Based on information provided by the City of Morgan Hill, the EIR will evaluate the capacity of utility systems in the project area to serve the annexation sites. A Water Supply Assessment for the project and an assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan will be prepared by *Akel Engineering*. Mitigation measures will be identified if needed to reduce significant impacts. Additionally, in conformance with Appendix F of the CEQA Guidelines, the EIR will identify the potential for the project to result in significant energy impacts. Potential energy impacts will be assessed based on information provided in the greenhouse gas analysis prepared for the project. Mitigation measures for energy impacts will be identified, as appropriate.
- Alternatives to the Proposed Project:** As required by CEQA, the EIR will describe alternatives to the project as it is proposed. The emphasis will be on alternatives that might reasonably be assumed to reduce the significant impacts of the project while achieving most of the project objectives. Alternatives will be identified in consultation with City staff and will include a "No Project" alternative that evaluates the effects of not developing the

annexation areas and instead assumes that the full General Plan buildout scenario is accommodated within the existing City limits.

- **Cumulative Impacts:** The EIR will include a discussion of cumulative impacts from the project in combination with other past, pending, and reasonably foreseeable future development in the area, in conformance with CEQA Guidelines Section 15130. This list of projects will be based upon information provided by City staff and neighboring jurisdictions, as appropriate.
- **Other Required Sections:** The EIR will include all sections required by the CEQA Guidelines, including Growth Inducing Impacts, Significant Unavoidable Impacts, References, Authors and Consultants, and copies of technical reports.

Pursuant to CEQA, the EIR will also include a discussion of cumulative impacts; alternatives; growth inducing impacts; significant, unavoidable impacts; significant irreversible environmental changes; references; and lead agency and consultants.

Task 2: Draft EIR and Notice of Completion

Revision of Administrative Draft EIR/Preparation of Draft EIR

Once the City provides DJP&A with comments on the ADEIR, DJP&A will revise the document and submit an electronic copy of the Screencheck Draft EIR to the City for final review and comment. DJP&A will make any final revisions to the Screencheck Draft EIR and prepare the Draft EIR for public circulation.

DJP&A will provide the City with up to 35 hard copies of the Draft EIR for public distribution, a PDF of the document for posting on the City's website, as well as 35 hardcopies of the executive summary and 50 CDs of entire document for submittal to the State Clearinghouse.

Notice of Completion

DJP&A will prepare the Notice of Completion (NOC), in accordance with the CEQA and City of x requirements. The NOC will include a brief description of the project, the project location, and will state where copies of the Draft EIR are available for review. DJP&A will submit an electronic draft of the NOC to the City for review and comment. DJP&A will revise and finalize the NOC based on City comments. DJP&A will transmit the NOC and copies of the EIR to the State Clearinghouse on behalf of the City.

Task 3: Final EIR, Mitigation Monitoring and Reporting Program, and Other Related Items

Preparation of Final EIR

Upon completion of the 45-day Draft EIR circulation period, DJP&A will prepare an Administrative Draft Final EIR. The Final EIR will contain the following:

- List of persons and agencies who commented on the Draft EIR;
- Responses to comments on the Draft EIR;
- Revisions to the EIR text, as necessary; and
- Copies of letters received on the Draft EIR.

This scope of work assumes approximately 4 hours of Principal Project Manager time and 16 hours of Project Manager time to respond to comments. If additional effort is required to respond to the comments, it can be completed on a time and materials basis, in accordance with the fee schedule, which follows.

Up to 10 copies of the Administrative Draft Final EIR will be submitted to City Staff for review. The document will be revised per the comments received, and DJP&A will provide up to 35 copies of the Final EIR to the City for public distribution. DJP&A will also provide the City with a PDF of the document for posting on the City's website.

Preparation of Mitigation Monitoring and Reporting Program

DJP&A will prepare a draft MMRP for the project. The MMRP will summarize the mitigation measures identified, when mitigation measures will be implemented, who will be responsible for implementation, and who will provide oversight. DJP&A will submit a draft of the MMRP for the City's use prior to the project hearing.

Findings

Although we are not attorneys and do not prepare legal findings, DJP&A will assist City Staff and the City Attorney in compiling information from the EIR for findings required under CEQA Guidelines Section 15091, if requested to do so.

Notice of Determination

DJP&A will prepare a Notice of Determination (NOD), in accordance with CEQA and City of Morgan Hill requirements. The NOD will include a brief project description, date of project approval, determination of the project's environmental effects, mitigation measures and conditions of approval, statement whether overriding considerations were adopted, and the location where the Final EIR and record of project approval may be examined.

DJP&A will submit an electronic copy of the draft NOD for the City's review. Based on comments received from the City, DJP&A will revise and finalize the NOD. An electronic copy of the finalized NOD will be submitted to the City.

Task 4: Meetings and Hearing Attendance, Project Management

Attendance of Meetings and Hearings

This scope of work includes DJP&A attendance at up to 1 project/community meetings and 2 public hearings (e.g., one Planning Commission hearing and one City Council hearing). DJP&A can attend additional public hearings or meetings requested on a time and materials basis.

Project Management

DJP&A will provide general EIR project management, contract administration, and coordination with the City and project team throughout the EIR process. The DJP&A Project Manager will coordinate with the City on a regular basis using email and telephone communications.

Estimated Schedule

DJP&A proposes the following optimum schedule for preparation of the EIR. DJP&A can commit to maintain the schedule in the areas that are within our control. Completion of the EIR, as outlined in the schedule below, is based upon receipt of project information listed on the following page in accordance with the schedule. Delays in receiving requested information or responses by others will result in at least day-for-day delays in the overall schedule.

Task	Duration of Task	Time Elapsed
1. DJP&A receives authorization to proceed and requested project information	---	1 day
2. DJP&A completes Administrative Draft EIR	16 weeks	16 weeks
3. City Staff Review of Administrative Draft EIR	4 weeks	20 weeks
4. DJP&A revises ADEIR and submits 2nd Admin Draft EIR	2 weeks	22 weeks
5. City Staff Review of 2nd Administrative Draft EIR	2 weeks	24 weeks
6. DJP&A revises ADEIR and submits Screencheck Draft EIR	1 week	25 weeks
7. City staff review of Screencheck DEIR	1 week	26 weeks
8. DJP&A revises Screencheck and prints DEIR	1 week	27 weeks
9. DEIR circulates for public review	45 days	33.5 weeks
10. DJP&A prepares Administrative Draft Final EIR	3 weeks	36.5 weeks
11. City staff reviews Administrative Draft FEIR	2 weeks	38.5 weeks
12. DJP&A revises FEIR and submits Screencheck FEIR	1 week	39.5 weeks
13. City staff reviews and approves Screencheck FEIR, DJP&A prints FEIR	1 week	40.5 weeks
14. City circulates FEIR for ten days	1.5 weeks	42 weeks
Total		+/- 42 weeks

Project Information Required from City of Morgan Hill

Our scope and schedule are based on the assumption that we will receive the below project information concurrent with the authorization to proceed.

Plans (in PDF)

- ☐ Maps of proposed annexation sites, including locations, site boundaries and acreages.

Project Details

- ☐ Written description of the project, including maximum development assumptions and discretionary approvals
- ☐ Utility improvements (if any)
- ☐ Right of way improvements (if any)
- ☐ Project objectives

Cost Estimate

Based on our understanding of the project and technical reports required, the cost for preparation of the EIR is estimated not to exceed **\$218,930**. Payment will be due on a monthly basis. A breakdown of the cost estimate is provided below. Costs will be charged on a time and materials basis, commensurate with work completed, in accordance with the charge rate schedule outlined on the following page, consistent with our current on-call agreement with the City. If DJP&A does not need all the time that has been budgeted, we will only bill for the time actually spent completing the work.

This scope is valid for 90 days and assumes that no issues that arise would require any additional technical analysis or documentation. In the event additional technical analysis is required, we can complete that work on a time and materials basis, upon your authorization. Project description changes after our notice to proceed is received may have schedule and budget implications.

David J. Powers & Associates, Inc.

- | | |
|---|----------|
| • Preparation of EIR | \$68,070 |
| • Reimbursables (travel, printing, etc.)* | \$3,980 |

Subconsultants*

- | | |
|---|----------|
| • Hexagon Transportation Consultants, Inc. (Traffic) | \$74,750 |
| • Illingworth & Rodkin, Inc. (Air Quality) | \$6,930 |
| • Illingworth & Rodkin, Inc. (Greenhouse Gas Emissions) | \$3,220 |
| • Illingworth & Rodkin, Inc. (Noise) | \$18,120 |
| • Akel Engineering (Water and Wastewater Master Plan Assessments) | \$27,460 |
| • Akel Engineering (Water Supply Assessment) | \$16,400 |

Total: \$218,930

* Subconsultant and reimbursable expenses include our standard 15 percent administrative fee.

EXHIBIT B - SCHEDULE OF COMPENSATION RATES

CHARGE RATE SCHEDULE¹

SENIOR PRINCIPAL	\$ 250.00 PER HOUR
PRINCIPAL PROJECT MANAGER	\$ 220.00 PER HOUR
SENIOR ENVIRONMENTAL SPECIALIST	\$ 195.00 PER HOUR
SENIOR PROJECT MANAGER	\$ 175.00 PER HOUR
ENVIRONMENTAL SPECIALIST	\$ 160.00 PER HOUR
PROJECT MANAGER	\$ 150.00 PER HOUR
ASSOCIATE PROJECT MANAGER	\$ 135.00 PER HOUR
ASSISTANT PROJECT MANAGER	\$ 110.00 PER HOUR
RESEARCHER	\$ 95.00 PER HOUR
DRAFTSPERSON/GRAPHIC ARTIST	\$ 85.00 PER HOUR
DOCUMENT PROCESSOR/QUALITY CONTROL	\$ 85.00 PER HOUR
ADMINISTRATIVE MANAGER	\$ 85.00 PER HOUR
OFFICE SUPPORT	\$ 70.00 PER HOUR

MATERIALS, OUTSIDE SERVICES AND SUBCONSULTANTS INCLUDE A 15% ADMINISTRATION FEE.

MILEAGE WILL BE CHARGED PER THE CURRENT IRS STANDARD MILEAGE RATE AT THE TIME COSTS OCCUR.

SUBJECT TO REVISION JANUARY 2012

¹ David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis.

EXHIBIT C - SCHEDULE OF PERFORMANCE

Estimated Schedule

DJP&A proposes the following optimum schedule for preparation of the EIR. DJP&A can commit to maintain the schedule in the areas that are within our control. Completion of the EIR, as outlined in the schedule below, is based upon receipt of project information listed on the following page in accordance with the schedule. Delays in receiving requested information or responses by others will result in at least day-for-day delays in the overall schedule.

Task	Duration of Task	Time Elapsed
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11. City staff reviews Administrative Draft FEIR	2 weeks	38.5 weeks
12. DJP&A revises FEIR and submits Screencheck FEIR	1 week	39.5 weeks
13. City staff reviews and approves Screencheck FEIR, DJP&A prints FEIR	1 week	40.5 weeks
14. City circulates FEIR for ten days	1.5 weeks	42 weeks
Total		+/- 42 weeks

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of February 1, 2017 ("Effective Date") by and between the Local Agency Formation Commission of Santa Clara County ("LAFCO") and the City of Morgan Hill ("City"). LAFCO and City are collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA") the City prepared an Environmental Impact Report for its proposed 2035 General Plan Update ("General Plan EIR").

B. Consistent with LAFCO's duties as a responsible agency, LAFCO submitted extensive comments to the City regarding the adequacy of the General Plan EIR under CEQA.

C. On or about July 27, 2016, after considering and responding to all of the comments on the General Plan EIR, City adopted the Morgan Hill 2035 General Plan pursuant to the General Plan EIR.

D. On or about August 2, 2016, City filed a Notice of Determination regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the General Plan EIR. Pursuant to Public Resources Code section 21167, this Notice of Determination began a 30-day statute of limitations for bringing an action to set aside certification of the General Plan EIR.

E. On August 25, 2016, the Parties entered into a Tolling Agreement ("Tolling Agreement") to toll the statute of limitations for LAFCO to bring a challenge to the General Plan EIR.

F. On September 29, 2016, the Parties entered into the First Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until December 31, 2016.

G. On December 19, 2016, the Parties entered into the Second Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until February 15, 2017.

H. During this tolling period, the Parties have been engaged in discussions regarding the means by which to address LAFCO's concerns with the EIR without proceeding with litigation.

I. LAFCO and City have now agreed to compromise and settle all matters and disputes between themselves in order to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the General Plan EIR.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, promise, and covenant as follows:

1. Recitals and Definitions Incorporated. Each recital and definition set forth above is incorporated herein by reference and is made part of this Agreement.
2. No Admission. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission of error or wrongdoing by any Party or of any inadequacy or impropriety in connection with City's certification of the EIR.
3. City Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Agreement, City shall implement the following terms and actions:
 - 3.1. The City shall conduct environmental review under CEQA prior to any decision as to whether to initiate and carry-out a project (as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378) concerning Urban Service Area ("USA") amendments and/or annexation of property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan attached as "Exhibit A" and incorporated herein by reference.
 - 3.2. The nature of the project to be carried out by the City may be developed at the discretion of the City, but shall, in any event, result in the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan ("Annexation EIR") and shall not tier from, or rely in any way (e.g., pursuant to CEQA, including but not limited to Public Resources Code sections 21094, 21083.3 and 21166 and/or CEQA Guidelines sections 15152, 15153, 15162, 15168, 15183, and 15385), on the General Plan EIR.
 - 3.2.1. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System until the year 2035 by amending the General Plan and Chapter 18.78 of the Municipal Code, also known as "Measure S."
 - 3.2.2. The Annexation EIR will include:
 - 3.2.2.1. A full water supply assessment; and

3.2.2.2. An assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan.

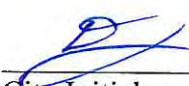
- 3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.
- 3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as it exists as of the Effective Date of this Agreement may rely on and tier off of the General Plan EIR.
- 3.5. This Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR as the basis for submitting an annexation application to LAFCO.
4. LAFCO Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Settlement Agreement LAFCO shall implement the following terms and actions:
 - 4.1. LAFCO will not to file any lawsuit challenging the General Plan EIR.
 - 4.2. LAFCO will not to seek any fees or costs from City associated with LAFCO's participation in the administrative process for the General Plan EIR or associated with LAFCO's contemplated litigation regarding the General Plan EIR.
 - 4.3. LAFCO reserves its rights, as a responsible agency, with regard to its review and consideration of the adequacy of the Annexation EIR and any CEQA documents that City may approve, adopt, or certify in support of any future application it may submit to LAFCO.
5. Joint Obligations. The City and LAFCO will work together to ensure preparation of adequate CEQA documents for any proposed annexation application.
6. Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights or benefits under or by reason of this Agreement.
7. Enforcement of Agreement. No action for breach of this Agreement shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

8. Mutual Release. LAFCO and the City mutually release each other's affiliates, members, directors, officers, employees, agents, assigns, and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that the City and LAFCO have as of the effective date of this Agreement arising out of, or connected to, the General Plan EIR, whether known, unknown or suspected. Upon the Effective Date of this Agreement, the City and LAFCO have read and have otherwise been informed of the meaning of Section 1542 of the California Civil Code, and have consulted with their respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. The City and LAFCO hereby expressly waive the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."



LAFCO Initials



City Initials

9. Damages. The Parties agree that (i) the performance of the obligations of this Agreement are paramount; (ii) in the event of a breach, monetary damages will provide inadequate relief; and (iii) that each may seek equitable relief to enforce such obligations. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees.
10. Miscellaneous Provisions.
- 10.1. Notices. Any notice, request, or communication required to be given to either Party under this Agreement shall be given in writing and shall be personally delivered or mailed by prepaid registered or certified mail to the addresses below:

If to LAFCO:

Neelima Palacherla, Executive Officer
70 W. Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Telephone: (408) 993-4713
Email: Neelima.Palacherla@ceo.sccgov.org

With copies sent to:

Mala Subramanian
Best Best & Krieger LLP

2001 N. Main Street, Suite 390
 Walnut Creek, CA 94596
 Telephone: (925) 977-3303
 Email: msubramanian@bbklaw.com

If to City:

City Manager
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 city.manager@morganhill.ca.gov

With copies sent to:

City Attorney
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128
 city.attorney@morganhill.ca.gov

In the event that any Party's address or contact information changes, that Party shall be responsible for notifying the other Party within five (5) working days of the change.

- 10.2. Entire Agreement. The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties, or representations made by either Party or by any representative of any Party, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.
- 10.3. Amendments and Modifications. This Agreement may only be amended or modified through writing executed by all the Parties.
- 10.4. Choice of Law and Choice of Forum. This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed, and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Santa Clara.
- 10.5. Authorized Signatory. Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

- 10.6. Counterparts. This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.
- 10.7. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 10.8. Effective Date. This Agreement is effective as of the Effective Date written in the first paragraph.

IN WITNESS WHEREOF, this Agreement is executed and agreed to by the following:

**LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY**

By: 

Date: 2/1/2017

Name: Malathy Subramanian

Title: General Counsel

CITY OF MORGAN HILL

By: 

Date: 1/23/2017

Name: Donald A. Larkin

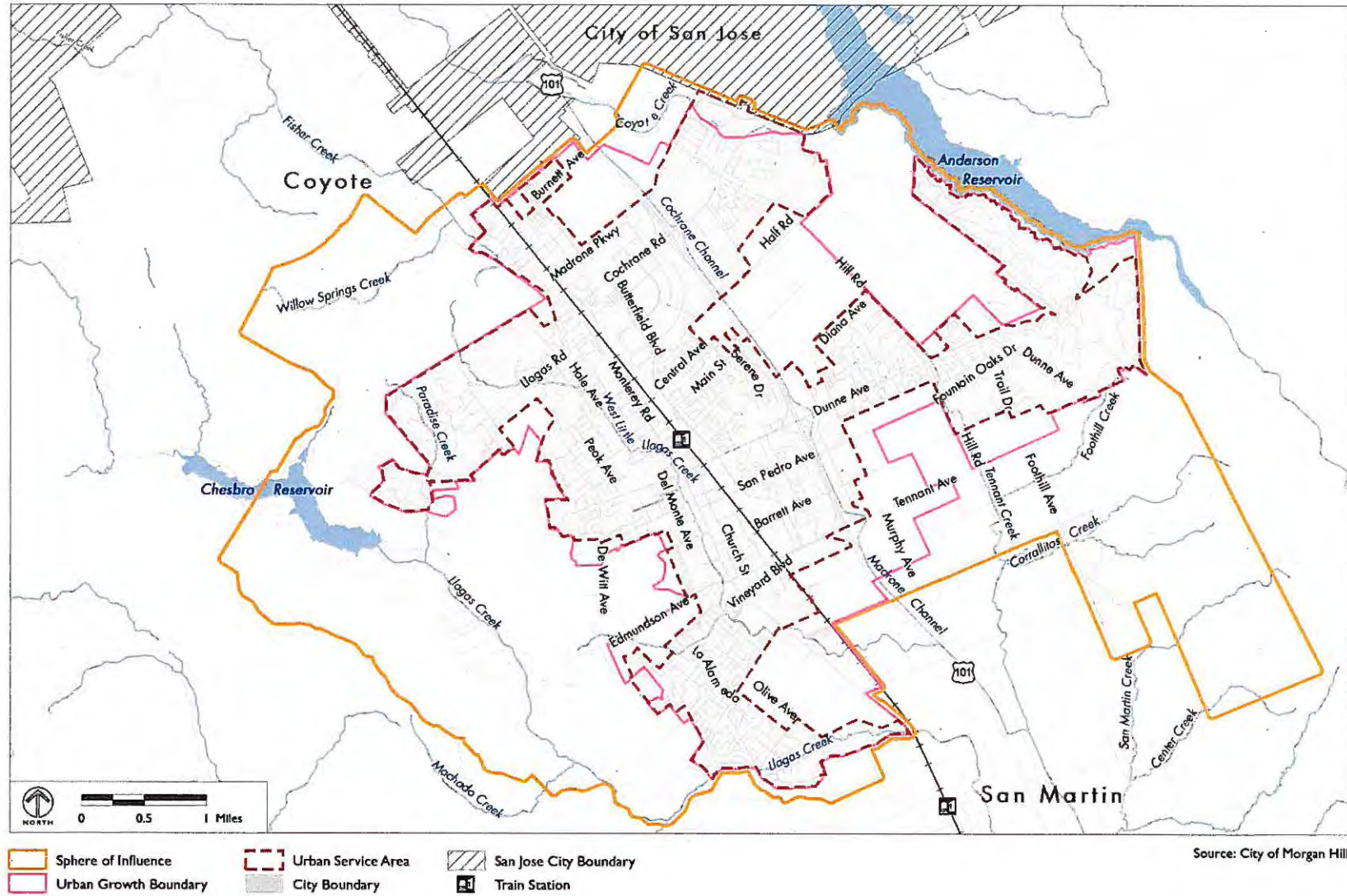
Title: City Attorney

EXHIBIT A

Figure CNF-1 of the Morgan Hill 2035 General Plan

[Attached behind this page]

Figure CNF-1 City Boundaries



**CONSULTANT AGREEMENT
DAVID J. POWERS & ASSOCIATES, INC.**

THIS AGREEMENT is entered into and becomes effective on 5/24/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and DAVID J. POWERS & ASSOCIATES, INC. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on May 2, 2018.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2019 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be preparation of the Annexation EIR as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$219,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Nineteen 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 during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with 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. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

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

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

7.1. **Insurance Types and Amounts.**

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

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

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

7.1.5. Professional Liability.

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

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

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Address of CITY is as follows:

Community Dev. 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. **Maintenance of Records**.
 - 15.1. **Maintenance**. CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.
 - 15.2. **Access to and Audit of Records**. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the

performance of this Agreement for a period of three years after final payment under the Agreement.

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

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

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

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

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

20. **Defense and Indemnification.**

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

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

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

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

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

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

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

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

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

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

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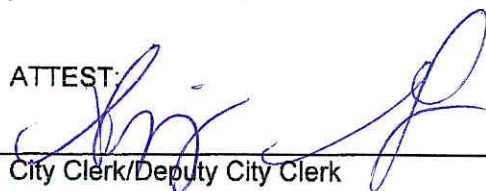
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

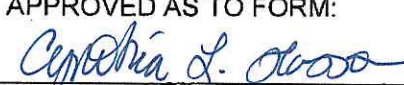
ATTEST:


City Clerk/Deputy City Clerk

for Michelle Wilson
Print Name

Date: 5/30/18

APPROVED AS TO FORM:


City Attorney

for Donald A. Larkin
Print Name

Date: 5-22-18

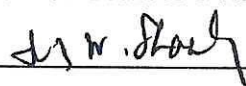
CITY OF MORGAN HILL


City Manager

Christina J. Turner
Print Name

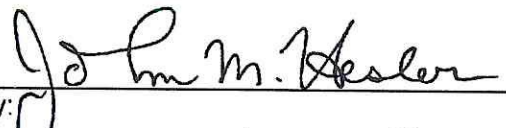
Date: 5/24/18

DAVID J. POWERS & ASSOCIATES, INC.

By: 

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

Date: 5-15-2018

By: 

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

Date: 5-15-2018

EXHIBIT A - SCOPE OF SERVICES



Morgan Hill Annexation Environmental Impact Report

May 4, 2018

Primary Contact

The primary David J. Powers & Associates, Inc. (DJP&A) contact for this project will be Mike Campbell. Mike's contact information is provided below.

Mike Campbell, AICP
Project Manager
David J. Powers and Associates
1871 The Alameda, Suite 200
San Jose, CA 95126
Direct: (408) 454-3425
Email: mcampbell@davidjpowers.com

Project Understanding

The project is the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary (UGB) as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System (RDCS) until the year 2035. The Annexation EIR will include a full water supply assessment and an assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan. The geographic scope of the EIR includes unincorporated lands outside of the USA and within the UGB, but not including areas covered by the SEQ/Ag Preservation Certified EIR.

Scope of Services

DJP&A will prepare a program-level EIR for the proposed project that complies with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, and will meet the requirements of the City of Morgan Hill. The work elements will include preparation of an Administrative Draft EIR and Notice of Preparation, a Draft EIR and Notice of Completion, a Mitigation Monitoring and Reporting Program, and a Final EIR. These tasks are described below.

Task 1: Administrative Draft EIR and Notice of Preparation

Kick-Off Meeting and EIR Initiation

DJP&A will attend one EIR kick-off meeting with the City and the project team to discuss the project, further refine the EIR scope as needed, identify alternatives, and coordinate the scheduling and preparation of the EIR.

Project Description and Notice of Preparation

DJP&A will draft a project description and provide it to the City to review for accuracy. The project description will be based on project information to be provided by the City. A preliminary list of project information needed is included on page 11 of this scope of work. Once the project description is finalized, DJP&A will prepare the EIR NOP.

DJP&A will prepare the NOP for circulation by the City of Morgan Hill. The NOP will include a brief project description, project location map, and discussion of potential environmental effects of the project. This scope includes DJP&A attendance at one public EIR scoping meeting for the project. The text of the EIR will incorporate relevant issues raised in the responses to the NOP received during the 30-day NOP circulation period.

Preparation of Administrative Draft EIR

DJP&A will prepare an EIR consistent with the requirements of the California Environmental Quality Act (CEQA) and the City of Morgan Hill. The EIR will include an introduction, summary, project description, environmental setting, discussion of environmental impacts, and mitigation measures to reduce significant impacts.

Upon completion of the Administrative Draft EIR (ADEIR), DJP&A will submit up to 10 hard copies of the document to the City for review and comment, along with Word and pdf electronic copies.

The main sections of the EIR are described below.

Introduction

The introduction to the EIR will describe the purpose of the EIR, provide a general overview of the CEQA process, and describe the public participation process and opportunities for input.

EIR Summary

A summary of the EIR will include a brief description of the proposed project and identify the impacts of the project and proposed mitigation measures in tabular format. The summary will also briefly describe the project alternatives and address any known areas of public controversy.

Project Description

The project description prepared in Task 2 will be included in the EIR. The project description will also include a list of project objectives, necessary discretionary actions, and decision-making agencies. Maps and graphics will be provided to illustrate the text.

Existing Environmental Setting, Impacts, and Mitigation Measures

In accordance with CEQA Guidelines Section 15125, the EIR will clearly describe the development history and environmental setting for the proposed annexation sites and surrounding areas, and will emphasize any particularly sensitive environmental characteristics. The EIR will identify the thresholds/criteria for significance for each technical subject area. The technical reports described below will be attached as appendices to the EIR.

The EIR will assess the potential for the proposed project to result in significant impacts. All significant environmental impacts resulting from the project will be identified and illustrated graphically where appropriate (CEQA Guidelines Section 15126.2). The EIR will identify proposed and/or feasible mitigation and avoidance measures for all significant impacts resulting from the project. Mitigation measures included in the EIR will be monitorable, in accordance with the AB 3180 legislation pertaining to the monitoring or reporting of project mitigation. A brief description of the primary issues to be addressed in the EIR is provided below.

- **Consistency with Plans and Policies:** This section will discuss whether or not the proposed project is consistent with applicable land use controls, including local, regional, and statewide plans and policies, including LAFCO policies. Particular attention will be given to inconsistencies, if any are identified, and the likelihood that such inconsistencies might result in significant adverse environmental effects.
- **Aesthetics:** The EIR will qualitatively discuss the change in visual character for the areas proposed for annexation and USA expansion, based on foreseeable future growth according to the General Plan land use designations for those areas.
- **Agricultural Resources:** The project would convert farmland to residential or other non-agricultural uses. The EIR will evaluate the significance of this loss of farmland and identify program-level mitigation measures to reduce potential impacts. The EIR will review the programs and mitigations for the preservation of agricultural lands contained in the City's Southeast Quadrant project, and will address LAFCO's previously stated concerns, including recognizing their definition of farmland, which is more expansive than defined in CEQA.
- **Air Quality:** *Illingworth and Rodkin, Inc.* will prepare a report addressing the local and regional air emissions impacts of the full project build-out scenario based on the most recent methods for predicting air pollutant, greenhouse gas, and toxic air contaminant emissions from land use projects. The EIR will identify mitigations consistent with

applicable Bay Area Air Quality Management District (BAAQMD) requirements for significant impacts associated with Annexation development areas. Primary air quality issues would be the consistency of the annexation with the General Plan and most recent Clean Air Plan and effects of air pollutant sources upon sensitive receptors in the Annexation areas (e.g., new residences near the freeway). The EIR will discuss the location of proposed residential uses in relation to existing toxic air contaminant sources and odor sources based on existing information from the General Plan EIR, however, this is no longer considered a CEQA issue (per the *BIA v. BAAQMD* case), but is a planning/policy issue.

- **Biology:** The EIR will include a program-level analysis of existing biological resources within the proposed annexation areas. No site-specific surveys are proposed. The analysis of loss of habitats will be based on available Santa Clara Valley Habitat Plan land cover mapping. Parcel-specific surveys would be necessary in the future as individual projects are proposed for development.
- **Cultural:** As with Biological Resources, the EIR will include a program-level analysis of existing cultural resources within the proposed annexation areas, with no site-specific surveys proposed. The analysis of potential archaeological and historic impacts from development upon annexation to the City will be based on available cultural sensitivity mapping, the City inventory of historic resources, and the Santa Clara County Heritage Resource Inventory (South County). Parcel-specific literature searches, site investigations and cultural surveys would be necessary in the future as individual projects are proposed for development. In addition, the City will need to consult with interested tribes pursuant to SB 18 and AB 52.
- **Geology:** The EIR's discussion of existing geologic issues affecting areas to be annexed will be based on existing available information, including City and County published geologic hazards maps.
- **Greenhouse Gas Emissions:** *Illingworth & Rodkin, Inc.* will prepare a Greenhouse Gas Emissions Assessment that models operational GHGs from new growth in annexation areas. The computations would be based on land use development projections for existing (or baseline) and future build-out scenarios, including one other alternative development scenario. Traffic modeling conducted for the Annexation program would be incorporated into the analysis to accurately predict emissions and General Plan Update effects. Project description features that reduce GHG emissions will be incorporated into the modeling, and per capita emissions would be computed based on population and employment projections.
- **Hazardous Materials/Hazards:** The EIR's discussion of existing hazards and hazardous materials issues affecting areas to be annexed will be based on existing available information, including City and County hazard maps, and environmental databases maintained by public agencies, including DTSC and RWQCB.

- **Hydrology/Water Quality:** The majority of the proposed annexation areas (areas south of Cochran Road) drain to Monterey Bay and future new development within the watershed would be subject to applicable requirements of the Central Coast Regional Water Quality Control Board. For the remaining properties, which drain north to San Francisco Bay, future development would be subject to the San Francisco Bay Regional Water Quality Control Board regulations. New development will result in increased stormwater runoff generated by impervious surfaces, the effects of which would be addressed by local, regional and statewide regulatory programs. New development that occurs within floodplains must comply with established local and federal (FEMA) flood hazard requirements. No hydrology or hydraulic modeling is proposed for the EIR's program-level analysis; future annexation projects located within flood zones may be subject to flood studies.
- **Land Use:** The annexation of the proposed areas would not physically divide an established community. The EIR will address the land use implications of future development on those parcels, including conformance with General Plan goals and policies. The EIR will also address potential impacts of the annexation areas related to the City's growth management policies such as Measure S.
- **Noise/Vibration:** The EIR will discuss future roadway noise from new growth in annexation areas in combination with increased roadway volumes from growth within the existing City limits, based upon a comprehensive noise analysis to be prepared by *Illingworth & Rodkin, Inc.* Many of the annexation areas are exposed to elevated noise from US101 or high volume local roadways, but that is no longer a CEQA issue. The City noise policies still require that new housing be protected from significant noise sources. The EIR will discuss the exposure of future residents in proposed annexation areas based on the findings of *Illingworth & Rodkin's* report.
- **Population/Housing:** The EIR will address the proposed project's potential to directly or indirectly inducing substantial population growth in the City, displacement of substantial numbers of existing housing units or people, and the resulting construction of replacement housing elsewhere. It is assumed that growth within the proposed annexation areas would be subject to the limitations of Measure S, and that the project would therefore not induce an increased rate of growth, but would instead facilitate substantial overall levels of growth compared to what is planned within the City limits.
- **Public Services:** The EIR will address the potential need to construct new schools, parks, libraries, etc. to serve the proposed annexation areas or expand existing public facilities.
- **Transportation:** The EIR, based on a traffic impact analysis prepared by *Hexagon Transportation Consultants, Inc.*, will discuss traffic impacts to study intersections and freeway segments from new growth in the proposed annexation areas, as well as in

combination with increased roadway volumes from planned growth within existing City limits. The traffic analysis will follow guidelines set forth by the City of Morgan Hill and the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA), and will include a near-term (Year 2025) and long-term (General Plan Year 2035) evaluation of the potential traffic impacts due to the proposed land use growth of each of the subject annexation properties on the transportation system. Because the City of Morgan Hill currently uses Level of Service (LOS) as the primary analysis metric when evaluating the impacts of land use decisions on the transportation system, and in addition the Morgan Hill 2035 General Plan uses LOS as its primary metric for the projected operation of the City's roadway system, the traffic analysis will be based upon LOS analysis. The evaluation of the effects of the proposed annexations will also be supplemented with an evaluation of their effects on vehicle miles traveled (VMT) within the City.

The traffic analysis will be completed using the City of Morgan Hill traffic demand forecasting (TDF) model that was recently used by *Hexagon* to complete the General Plan update for the City. The analysis will include the evaluation of intersections and freeway segments during the AM and PM commute hours and average daily traffic (ADT) on roadway segments. Since each of the subject annexation properties are dispersed around the City boundaries, the analysis will study the same intersections, freeway segments, and roadway segments that were evaluated in the Morgan Hill 2035 General Plan traffic study. *Hexagon* will utilize and update, as needed, the latest City of Morgan Hill TDF model to develop forecasts for *Existing Conditions*, *Year 2025 (Existing Plus Project) Conditions*, and *Year 2035 General Plan Conditions with Annexations* scenarios.

- **Utilities and Energy:** The conversion of the proposed annexation areas from rural residential and farmland to higher density residential, commercial and industrial uses would require the extension of utilities to the site to serve future development. Based on information provided by the City of Morgan Hill, the EIR will evaluate the capacity of utility systems in the project area to serve the annexation sites. A Water Supply Assessment for the project and an assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan will be prepared by *Akel Engineering*. Mitigation measures will be identified if needed to reduce significant impacts. Additionally, in conformance with Appendix F of the CEQA Guidelines, the EIR will identify the potential for the project to result in significant energy impacts. Potential energy impacts will be assessed based on information provided in the greenhouse gas analysis prepared for the project. Mitigation measures for energy impacts will be identified, as appropriate.
- **Alternatives to the Proposed Project:** As required by CEQA, the EIR will describe alternatives to the project as it is proposed. The emphasis will be on alternatives that might reasonably be assumed to reduce the significant impacts of the project while achieving most of the project objectives. Alternatives will be identified in consultation with City staff and will include a "No Project" alternative that evaluates the effects of not developing the

annexation areas and instead assumes that the full General Plan buildout scenario is accommodated within the existing City limits.

- **Cumulative Impacts:** The EIR will include a discussion of cumulative impacts from the project in combination with other past, pending, and reasonably foreseeable future development in the area, in conformance with CEQA Guidelines Section 15130. This list of projects will be based upon information provided by City staff and neighboring jurisdictions, as appropriate.
- **Other Required Sections:** The EIR will include all sections required by the CEQA Guidelines, including Growth Inducing Impacts, Significant Unavoidable Impacts, References, Authors and Consultants, and copies of technical reports.

Pursuant to CEQA, the EIR will also include a discussion of cumulative impacts; alternatives; growth inducing impacts; significant, unavoidable impacts; significant irreversible environmental changes; references; and lead agency and consultants.

Task 2: Draft EIR and Notice of Completion

Revision of Administrative Draft EIR/Preparation of Draft EIR

Once the City provides DJP&A with comments on the ADEIR, DJP&A will revise the document and submit an electronic copy of the Screencheck Draft EIR to the City for final review and comment. DJP&A will make any final revisions to the Screencheck Draft EIR and prepare the Draft EIR for public circulation.

DJP&A will provide the City with up to 35 hard copies of the Draft EIR for public distribution, a PDF of the document for posting on the City's website, as well as 35 hardcopies of the executive summary and 50 CDs of entire document for submittal to the State Clearinghouse.

Notice of Completion

DJP&A will prepare the Notice of Completion (NOC), in accordance with the CEQA and City of x requirements. The NOC will include a brief description of the project, the project location, and will state where copies of the Draft EIR are available for review. DJP&A will submit an electronic draft of the NOC to the City for review and comment. DJP&A will revise and finalize the NOC based on City comments. DJP&A will transmit the NOC and copies of the EIR to the State Clearinghouse on behalf of the City.

Task 3: Final EIR, Mitigation Monitoring and Reporting Program, and Other Related Items

Preparation of Final EIR

Upon completion of the 45-day Draft EIR circulation period, DJP&A will prepare an Administrative Draft Final EIR. The Final EIR will contain the following:

- List of persons and agencies who commented on the Draft EIR;
- Responses to comments on the Draft EIR;
- Revisions to the EIR text, as necessary; and
- Copies of letters received on the Draft EIR.

This scope of work assumes approximately 4 hours of Principal Project Manager time and 16 hours of Project Manager time to respond to comments. If additional effort is required to respond to the comments, it can be completed on a time and materials basis, in accordance with the fee schedule, which follows.

Up to 10 copies of the Administrative Draft Final EIR will be submitted to City Staff for review. The document will be revised per the comments received, and DJP&A will provide up to 35 copies of the Final EIR to the City for public distribution. DJP&A will also provide the City with a PDF of the document for posting on the City's website.

Preparation of Mitigation Monitoring and Reporting Program

DJP&A will prepare a draft MMRP for the project. The MMRP will summarize the mitigation measures identified, when mitigation measures will be implemented, who will be responsible for implementation, and who will provide oversight. DJP&A will submit a draft of the MMRP for the City's use prior to the project hearing.

Findings

Although we are not attorneys and do not prepare legal findings, DJP&A will assist City Staff and the City Attorney in compiling information from the EIR for findings required under CEQA Guidelines Section 15091, if requested to do so.

Notice of Determination

DJP&A will prepare a Notice of Determination (NOD), in accordance with CEQA and City of Morgan Hill requirements. The NOD will include a brief project description, date of project approval, determination of the project's environmental effects, mitigation measures and conditions of approval, statement whether overriding considerations were adopted, and the location where the Final EIR and record of project approval may be examined.

DJP&A will submit an electronic copy of the draft NOD for the City's review. Based on comments received from the City, DJP&A will revise and finalize the NOD. An electronic copy of the finalized NOD will be submitted to the City.

Task 4: Meetings and Hearing Attendance, Project Management

Attendance of Meetings and Hearings

This scope of work includes DJP&A attendance at up to 1 project/community meetings and 2 public hearings (e.g., one Planning Commission hearing and one City Council hearing). DJP&A can attend additional public hearings or meetings requested on a time and materials basis.

Project Management

DJP&A will provide general EIR project management, contract administration, and coordination with the City and project team throughout the EIR process. The DJP&A Project Manager will coordinate with the City on a regular basis using email and telephone communications.

Estimated Schedule

DJP&A proposes the following optimum schedule for preparation of the EIR. DJP&A can commit to maintain the schedule in the areas that are within our control. Completion of the EIR, as outlined in the schedule below, is based upon receipt of project information listed on the following page in accordance with the schedule. Delays in receiving requested information or responses by others will result in at least day-for-day delays in the overall schedule.

Task	Duration of Task	Time Elapsed
1. DJP&A receives authorization to proceed and requested project information	---	1 day
2. DJP&A completes Administrative Draft EIR	16 weeks	16 weeks
3. City Staff Review of Administrative Draft EIR	4 weeks	20 weeks
4. DJP&A revises ADEIR and submits 2nd Admin Draft EIR	2 weeks	22 weeks
5. City Staff Review of 2nd Administrative Draft EIR	2 weeks	24 weeks
6. DJP&A revises ADEIR and submits Screencheck Draft EIR	1 week	25 weeks
7. City staff review of Screencheck DEIR	1 week	26 weeks
8. DJP&A revises Screencheck and prints DEIR	1 week	27 weeks
9. DEIR circulates for public review	45 days	33.5 weeks
10. DJP&A prepares Administrative Draft Final EIR	3 weeks	36.5 weeks
11. City staff reviews Administrative Draft FEIR	2 weeks	38.5 weeks
12. DJP&A revises FEIR and submits Screencheck FEIR	1 week	39.5 weeks
13. City staff reviews and approves Screencheck FEIR, DJP&A prints FEIR	1 week	40.5 weeks
14. City circulates FEIR for ten days	1.5 weeks	42 weeks
Total		+/- 42 weeks

Project Information Required from City of Morgan Hill

Our scope and schedule are based on the assumption that we will receive the below project information concurrent with the authorization to proceed.

Plans (in PDF)

- ☐ Maps of proposed annexation sites, including locations, site boundaries and acreages.

Project Details

- ☐ Written description of the project, including maximum development assumptions and discretionary approvals
- ☐ Utility improvements (if any)
- ☐ Right of way improvements (if any)
- ☐ Project objectives

Cost Estimate

Based on our understanding of the project and technical reports required, the cost for preparation of the EIR is estimated not to exceed **\$218,930**. Payment will be due on a monthly basis. A breakdown of the cost estimate is provided below. Costs will be charged on a time and materials basis, commensurate with work completed, in accordance with the charge rate schedule outlined on the following page, consistent with our current on-call agreement with the City. If DJP&A does not need all the time that has been budgeted, we will only bill for the time actually spent completing the work.

This scope is valid for 90 days and assumes that no issues that arise would require any additional technical analysis or documentation. In the event additional technical analysis is required, we can complete that work on a time and materials basis, upon your authorization. Project description changes after our notice to proceed is received may have schedule and budget implications.

David J. Powers & Associates, Inc.

- | | |
|---|----------|
| • Preparation of EIR | \$68,070 |
| • Reimbursables (travel, printing, etc.)* | \$3,980 |

Subconsultants*

- | | |
|---|----------|
| • Hexagon Transportation Consultants, Inc. (Traffic) | \$74,750 |
| • Illingworth & Rodkin, Inc. (Air Quality) | \$6,930 |
| • Illingworth & Rodkin, Inc. (Greenhouse Gas Emissions) | \$3,220 |
| • Illingworth & Rodkin, Inc. (Noise) | \$18,120 |
| • Akel Engineering (Water and Wastewater Master Plan Assessments) | \$27,460 |
| • Akel Engineering (Water Supply Assessment) | \$16,400 |

Total: \$218,930

* Subconsultant and reimbursable expenses include our standard 15 percent administrative fee.

EXHIBIT B - SCHEDULE OF COMPENSATION RATES

CHARGE RATE SCHEDULE¹

SENIOR PRINCIPAL	\$ 250.00 PER HOUR
PRINCIPAL PROJECT MANAGER	\$ 220.00 PER HOUR
SENIOR ENVIRONMENTAL SPECIALIST	\$ 195.00 PER HOUR
SENIOR PROJECT MANAGER	\$ 175.00 PER HOUR
ENVIRONMENTAL SPECIALIST	\$ 160.00 PER HOUR
PROJECT MANAGER	\$ 150.00 PER HOUR
ASSOCIATE PROJECT MANAGER	\$ 135.00 PER HOUR
ASSISTANT PROJECT MANAGER	\$ 110.00 PER HOUR
RESEARCHER	\$ 95.00 PER HOUR
DRAFTSPERSON/GRAPHIC ARTIST	\$ 85.00 PER HOUR
DOCUMENT PROCESSOR/QUALITY CONTROL	\$ 85.00 PER HOUR
ADMINISTRATIVE MANAGER	\$ 85.00 PER HOUR
OFFICE SUPPORT	\$ 70.00 PER HOUR

MATERIALS, OUTSIDE SERVICES AND SUBCONSULTANTS INCLUDE A 15% ADMINISTRATION FEE.

MILEAGE WILL BE CHARGED PER THE CURRENT IRS STANDARD MILEAGE RATE AT THE TIME COSTS OCCUR.

SUBJECT TO REVISION JANUARY 2012

¹ David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis.



CERTIFICATE OF LIABILITY INSURANCE

5.c

DATE (MM/DD/YYYY)
05/21/2018

914
5-11-18

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

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

PRODUCER SelectSolutions Insurance Services 1107 Investment Blvd Suite 100 El Dorado Hills CA 95762		CONTACT NAME: Cora Lim PHONE (A/C, No, Ext): (866)500-6359 FAX (A/C, No): (925)951-0077 E-MAIL ADDRESS: coral@selectsolutionsins.com															
INSURED David J. Powers & Associates, Inc. 1871 The Alameda, Suite 200 San Jose CA 95126		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Property Casualty Company of America</td> <td>25674</td> </tr> <tr> <td>INSURER B: The Travelers Indemnity Company of Connecticut</td> <td>25682</td> </tr> <tr> <td>INSURER C: The Hanover American Insurance Company</td> <td>36064</td> </tr> <tr> <td>INSURER D: Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: Travelers Property Casualty Company of America	25674	INSURER B: The Travelers Indemnity Company of Connecticut	25682	INSURER C: The Hanover American Insurance Company	36064	INSURER D: Continental Casualty Company	20443	INSURER E:		INSURER F:	
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INSURER E:																	
INSURER F:																	

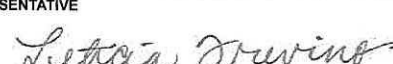
COVERAGES **CERTIFICATE NUMBER:** CL183826876 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	6805H0002841	12/03/2017	12/03/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Employee Benefits \$ 2,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BA6820L1531	12/03/2017	12/03/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured motorist BI \$ 1,000,000
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			CUP2C5902111	12/03/2017	12/03/2018	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A Y	WZ39816300	01/13/2018	01/13/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	PROFESSIONAL LIABILITY			EEH288347490	03/26/2018	03/26/2019	PER CLAIM \$2,000,000 AGGREGATE \$2,000,000

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

Re: Preparation of the Annexation Environmental Impact Report. As Per Contract or Agreement on File with the Insured. City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insured on General Liability policy if required by written contract per attached endorsement. Waiver of subrogation applies to General Liability and Workers Compensation policies if required by written contract per the attached endorsements.

CERTIFICATE HOLDER City of Morgan Hill Attn: Risk Management 17575 Peak Ave. Morgan Hill CA 95037	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- f. This insurance does not apply to the rendering of or failure to render any "professional services".
- g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.

- h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

COMMERCIAL GENERAL LIABILITY

3. The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO COVERAGE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. BLANKET ADDITIONAL INSURED B. EMPLOYEE HIRED AUTO C. EMPLOYEES AS INSURED D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS E. TRAILERS – INCREASED LOAD CAPACITY F. HIRED AUTO PHYSICAL DAMAGE G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT | <ul style="list-style-type: none"> H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT I. WAIVER OF DEDUCTIBLE – GLASS J. PERSONAL PROPERTY K. AIRBAGS L. AUTO LOAN LEASE GAP M. BLANKET WAIVER OF SUBROGATION |
|---|---|

A. BLANKET ADDITIONAL INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

B. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while

performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

C. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

COMMERCIAL AUTO

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:
 - (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
2. The following replaces Paragraph **A.2.a.(4)** of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:
 - (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

E. TRAILERS – INCREASED LOAD CAPACITY

The following replaces Paragraph **C.1.** of **SECTION I – COVERED AUTOS**:

1. "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

F. HIRED AUTO PHYSICAL DAMAGE

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Covered Autos Liability Coverage but not covered "autos" for Physical Damage Coverage, and this policy also provides Physical Damage Coverage for an owned "auto", then the Physical Damage Coverage is extended to "autos" that you hire, rent or borrow subject to the following:

- (1) The most we will pay for "loss" to any one "auto" that you hire, rent or borrow is the lesser of:
 - (a) \$50,000;
 - (b) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- (2) An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

- (3) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned covered "auto".

- (5) This Coverage Extension does not apply to:

- (a) Any "auto" that is hired, rented or borrowed with a driver; or
- (b) Any "auto" that is hired, rented or borrowed from your "employee".

G. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

H. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT – INCREASED LIMIT

Paragraph **C.1.b.** of **SECTION III – PHYSICAL DAMAGE COVERAGE** is deleted.

I. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

J. PERSONAL PROPERTY

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property Coverage

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto".

This coverage only applies in the event of a total theft of your covered "auto".

No deductibles apply to Personal Property coverage.

COMMERCIAL AUTO

K. AIRBAGS

The following is added to Paragraph **B.3., Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. AUTO LOAN LEASE GAP

The following is added to Paragraph **A.4., Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Auto Loan Lease Gap Coverage for Private Passenger Type Vehicles

In the event of a total "loss" to a covered "auto" of the private passenger type shown in the Schedule or Declarations for which Physical Damage Coverage is provided, we will pay any unpaid amount due on the lease or loan for such covered "auto" less the following:

- (1) The amount paid under the Physical Damage Coverage Section of the policy for that "auto"; and

(2) Any:

- (a) Overdue lease or loan payments at the time of the "loss";
- (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (c) Security deposits not returned by the lessor;
- (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (e) Carry-over balances from previous loans or leases.

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5., Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.



WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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

The additional premium for this endorsement shall be 2% % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

WHERE REQUIRED PER WRITTEN

Job Description

CONTRACT

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

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

Endorsement Effective
Insured

Policy No. WZ3-9816300-04

Endorsement No.
Premium \$

Insurance Company THE HANOVER AMERICAN INSURANCE COMPANY

Countersigned By _____



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Charlie Ha, Supervising Civil Engineer
APPROVED BY: No

APPROVE BUTTERFIELD VILLAGE - SUTTER BOULEVARD EXTENSION IMPROVEMENT AGREEMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to executive and administer the Butterfield Village – Sutter Boulevard Extension Improvement Agreement with JTJ Morgan Hill RE LLC.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Butterfield Village consists of a residential development with 389 apartment units (Jarvis-MH Apartments) located on the southeast corner of Jarvis Drive and Monterey Road (Attachment 1) and the Butterfield Technology Center Industrial Park. Butterfield Village also requires the development of a large, publicly accessible private park and the construction of the Sutter Boulevard Extension. As required by the project's conditions of approval for Site Review, the developer is required to enter into an Improvement Agreement with the City of Morgan Hill and provide a financial guarantee for the project's public improvements for the extension of Sutter Boulevard.

The project is comprised of two (2) development agreements consisting of one for the residential/park/roadway components, and the other for the industrial component; both entitled by the previous property owner, MWest. The project was subsequently sold to Braddock and Logan, who is developing this project as JTJ Morgan Hill RE, LLC. JTJ Morgan Hill RE, LLC has furnished the City with the necessary documents to complete the processing of the Improvement Agreement by providing surety bonds and insurance for the proposed public improvements for the Sutter Boulevard extension. Staff recommends that the City Council approve and authorize the City Manager to execute an Improvement Agreement (Attachment 2).

COMMUNITY ENGAGEMENT: Inform

Public Notice via mailed notice and newspaper advertisement was issued to inform the public of the City's intent to approve the Design Review Permit for the project. The Public Notice was also shared via the City's 411 email publication as well as a new

Development Project page on the website.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 6, 2015, the City Council adopted a resolution changing the General Plan designation for the project site from Industrial to Multi-Family Medium.

On September 2, 2015, the Council held a public hearing on an ordinance amending the zoning designation for the site to be consistent with the General Plan. The ordinance was adopted on October 7, 2015.

On November 10, 2015, the Planning Commission adopted Resolution No. 15-66, adopting final scores for the 2015 RDCS competition. The project did not receive a passing score. The City Council adopted Resolution No. 15-310 on December 16, 2015 denying an appeal of the project scores. The project did not qualify for allotments.

On January 10, 2017, the Planning Commission adopted Resolution No. 17-01 awarding the project 10 residential building allotments. The City Council adopted Resolution 17-017 denying appeals by two other projects and reaffirmed the distribution by the Planning Commission.

On May 22, 2018, the Planning Commission adopted Resolution No. 18-13, which awarded the project 71 residential allotments, but denied the project's request for multi-year allotments.

On June 20, 2018, the City Council adopted a Resolution denying an appeal of the Planning Commission's decision not to award multi-year allotments to the project.

On October 17, 2018 the City approved a Development Agreement for a 389-unit apartment project on the project site as part of a settlement of litigation brought by the applicant under the Housing Accountability Act.

FISCAL AND RESOURCE IMPACT:

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

The developer will construct improvements including but not limited to; roadway, water, wastewater, storm drain and other miscellaneous public infrastructure improvements at estimated value of \$2.6 million.

CEQA (California Environmental Quality Act):

A program-level Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum was adopted in July 2014.

A project level Initial Study/Consistency Checklist demonstrating consistency with the Butterfield – MWest General Plan Amendment Project GPA 14-04 Environmental Impact Report and Addendum (State Clearinghouse No. 2014072009) and the Morgan

Hill 2035 Environmental Impact Report (State Clearinghouse No. 2015022074) are linked (Attachment 3).

LINKS/ATTACHMENTS:

1. Site Map
2. Improvement Agreement - Butterfield Village Sutter Extension
3. General Plan Amendment Environmental Impact Report (weblink)



CITY OF MORGAN HILL

**Development Services
Engineering Land Development**

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

SITE MAP BUTTERFIELD VILLAGE SUTTER BLVD. EXTENSION



0 200 400 800 1,200 1,600
Feet

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

(RECORD AT NO FEE PURSUANT TO GOVERNMENT
CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

IMPROVEMENT AGREEMENT

JTJ MORGAN HILL RE LLC BUTTERFIELD VILLAGE - APN 726-25-061, 093, and 094 SUTTER BOULEVARD EXTENSION

THIS AGREEMENT is made on this ____ day of _____, 2020, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and JTJ MORGAN HILL RE LLC, a California Limited Liability Company ("PROPERTY OWNER").

RECITALS

The following Recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Morgan Hill Municipal Code Chapter 12.02.
2. PROPERTY OWNER has filed a Development Application and supporting documents on the property with the APNs APN 726-25-061, 093, and 094 and having the development name of **BUTTERFIELD VILLAGE** ("Development").
3. CITY requires as a condition of approval of the Development Permit, as described on said permit, that certain improvements be installed by PROPERTY OWNER as shown on the fully executed Development Improvement Plans entitled **Improvement Plans for Sutter Boulevard Extension** ("Improvements"), on file with CITY and incorporated herein by this reference.
4. PROPERTY OWNER has been unable to complete, prior to the issuance of the Development Permit, all of the Improvements required by CITY to the satisfaction of the City Engineer.
5. PROPERTY OWNER is required by the terms of the Morgan Hill Municipal Code to improve all streets, highways, or public areas which are part of the Development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer.
6. To assure CITY that PROPERTY OWNER will complete all the work and Improvements required

for the Development, the parties have entered into this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This term of this Agreement shall be six (6) months from the date of issuance of the Development Permit ("Term") unless extended by written agreement.
2. **Improvements.** PROPERTY OWNER agrees to construct the Improvements in a good and workmanlike manner in accordance with the plans and documents filed with and approved by CITY in conjunction with the Development, all of which are incorporated herein by reference. These items of the Improvements shall be completed, constructed and installed at PROPERTY OWNER's sole expense unless agreed to otherwise by CITY.
3. **Rights-of-Way.** Except as otherwise provided by this Agreement, CITY can hold without acceptance or recordation all lands, rights-of-way, and easements offered for dedication. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with the Government Code. All such offers may be accepted and recorded by CITY in its sole discretion at any later date without further notice to PROPERTY OWNER as provided by law. By way of explanation only, it is the current intention of CITY to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.
4. **Improvements: Time Limits.** PROPERTY OWNER agrees to cause all Improvements to be made and constructed to comply with all requirements of Morgan Hill Municipal Code Chapter 12.02, according to the improvement plans for the Development approved by the City Engineer and including any changes or alteration in the Improvements required by the City Engineer. The Improvements shall be completed utilizing CITY standards and specifications. PROPERTY OWNER agrees to complete the Improvements prior to the expiration of this Agreement, or the issuance of the certificate of occupancy, whichever is earlier; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by PROPERTY OWNER stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between PROPERTY OWNER and CITY that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. PROPERTY OWNER further agrees to maintain the securities described in Section 6 in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY.

In the event that PROPERTY OWNER shall fail to complete the Improvements within the time provided by this Agreement, CITY may in its sole discretion and in addition to any other remedy provided in this Agreement or by law, enter upon the Development and complete the Improvements and recover the full cost and expense of construction from PROPERTY OWNER, PROPERTY OWNER's successors and assigns, PROPERTY OWNER's Performance/Labor & Material Bonds associated with this Development,

or from the then owner of the Development, and/or place a lien upon the Development property for the cost and expense. Any and all CITY costs shall include but not be limited to administrative and attorney costs.

5. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements is to be constructed or installed on land not within the Development or already existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from PROPERTY OWNER to allow construction or installation of the Improvements or work has been obtained and paid for by PROPERTY OWNER.

6. **Bond Requirements.** To secure the performance of each Improvement required under this Agreement and to ensure full payment to all persons furnishing or supplying labor or materials for each Improvement required, PROPERTY OWNER shall provide to CITY concurrently with the execution of this Agreement, payment and performance bonds each in the amount of 100% of the total estimated cost of the Improvements as determined by the City Engineer,. A performance bond to secure faithful performance of this Agreement as required by Section 12.02.160 of the Morgan Hill Municipal Code for performance shall be provided in substantially the form set forth in Exhibit B. A payment bond to secure full payment to all persons furnishing or supplying labor or materials as required by Section 12.02.160 of the Morgan Hill Municipal Code for labor and materials shall be provided in substantially the form set forth in Exhibit C. PROPERTY OWNER shall provide an additional guarantee and warranty security (in substantially the form set forth in Exhibit D) of fifty (50%) percent of the cost of construction of the Improvements to guarantee and warranty the Improvements for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, as required by Section 12.02.170 of the Morgan Hill Municipal Code.

Improvements and the City Engineer's Estimated Costs of Improvements as of **February 2020**
+ are attached hereto as Exhibit "A".

Any bonds submitted under this Agreement shall be executed by a surety company authorized to write the same in the State of California, and subject to the review and approval of the City's risk manager. All required securities shall be in a form approved by the City Attorney. The bonds shall be executed on CITY forms by a surety authorized to do business in the State of California and shall be approved by the City Attorney and the City Engineer. Submittal of the Performance/Labor & Material Bonds is a requirement prior to CITY's issuance of an encroachment permit to do work in CITY's right-of-way. Submittal of the Warranty Bond is a requirement prior to the City Engineer's consideration of acceptance of the public improvements.

Note: If Cash Deposit Agreement Guaranteeing Improvements is utilized for security purposes, the Cash Deposit Agreement amount shall be two hundred (200%) percent of the aforementioned City Engineer's Estimated Costs of Improvements. In lieu of the above, CITY will accept a certificate of deposit in CITY's name with escrow instructions acceptable to the City Engineer, subject to the approval of the City Attorney.

The release of any securities shall be governed by the provisions of Section 12.02.170 of the Morgan Hill Municipal Code.

7. **Irrevocability of Security.** The securities provided under this Agreement shall be irrevocable, shall not be limited as to time, and may be released only upon the written approval of the City Engineer and City

Council.

8. **Duty to Warn.** PROPERTY OWNER shall give adequate warning to the public of each and every dangerous condition which may exist in the Improvements, and will take all reasonable actions to protect the public from any dangerous condition.
9. **Warranty.** PROPERTY OWNER guarantees and warrants the Improvements required by this Agreement and agrees to remedy any defects in the Improvements arising from faulty or defective materials or construction occurring within twelve (12) months after acceptance by CITY of said Improvements. Following notice, PROPERTY OWNER shall, without delay or cost to CITY, repair, replace, or reconstruct any defective or unsatisfactory portion of Improvements. CITY may, at its sole option, perform the repair or replacement itself if PROPERTY OWNER has failed to commence repair within twenty (20) days after CITY has mailed written notice to PROPERTY OWNER. In such event, PROPERTY OWNER agrees to pay the cost of repair and replacement, plus 15%, by CITY; and CITY may recover such costs as a lien against the Development. CITY may proceed immediately to make repairs should an emergency arise without waiving its rights of recovery against PROPERTY OWNER.
10. **Failure of Performance.** In addition to the other remedies provided by this Agreement, CITY shall have recourse to the security given. In the event that CITY seeks recourse against any security, CITY shall have recourse against PROPERTY OWNER for any and all amounts necessary to complete the obligation. All administrative costs, including attorneys' fees shall be a proper charge against the security and PROPERTY OWNER pursuant to Government Code. The right of CITY to draw upon or utilize the security is additional and not in lieu of any other remedy available to CITY at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, CITY damages for PROPERTY OWNER's default shall be measured by the cost of completing the required Improvements.
11. **Certificate of Occupancy.** PROPERTY OWNER understands that CITY will expect completion, to the satisfaction of CITY, of specific public improvements as well as private utility improvements prior to CITY Approval of a Certificate of Occupancy for any building on the Development property. The specific improvements shall include activation of all public utilities (water, sewer, storm drain); activation of all private utilities (electric, gas, phone) except for cable; street lights turn-on request filed with P G & E; and full street improvements (curb-gutter and paving with/without final lift) from existing public street to building under consideration for Certificate of Occupancy. PROPERTY OWNER, furthermore, agrees to so inform successor in lot interest should lot be transferred to another party prior to CITY acceptance of public improvements.
12. **Final Toxic Report.** Where applicable, PROPERTY OWNER hereby agrees to furnish the City Attorney with a copy of the Final Toxic Report issued by the appropriate licensed consultant on the proposed Development. This report must be received prior to final acceptance of on-site improvements and issuance of certificate of occupancy.
13. **Public Improvements Fee Schedule.** PROPERTY OWNER shall pay the following sums in cash to CITY pursuant to the provisions of Resolution 1383 and any amendments. These sums shall be paid to CITY at the time of issuance of the Development Permit, and shall be in accordance with the attached Department of Public Works Fee Schedule attached hereto demonstrating a current Total Fee Obligation of \$281,348. All Fees are estimated and may be increased by CITY subject to current resolutions and

ordinances. These fees are subject to a minimum annual revision. PROPERTY OWNER consents to increases in these fees. This Agreement shall not be construed to fix or freeze fees as of any point prior to issuance of Development Permits.

All development fees shall be those in effect at the time of the issuance of the Development Permit for this Development. This Agreement does not entitle the developer to any permit including a grading permit. A separate application for a grading permit should be made to the Building Department.

14. **Other Agreements Associated with This Improvement Agreement:** The following "checked off" Agreements are understood to be associated with this Agreement and have been fully executed prior to or concurrent with this Agreement:

☐ CITY "Streets" Reimbursement Agreement (CITY Ordinance 982)

PROPERTY OWNER acknowledges and agrees that the property is subject to a Reimbursement Agreement whereby PROPERTY OWNER must reimburse CITY for all costs associated with off-site improvements completed by the CITY and/or others or to be completed by CITY and/or others. PROPERTY OWNER agrees to pay CITY for all sums already incurred under the reimbursement agreement prior to issuance of any building permits. If the improvement has not been completed by CITY and/or others, then PROPERTY OWNER or successor-in-interest agrees to fully reimburse CITY for all costs incurred by CITY and/or others in constructing the improvements.

☐ CITY Public/Private Utility Reimbursement Agreement

☐ Landscape & Lighting Maintenance Assessment District Annexation

☐ Improvements Deferral Agreement

15. **Insurance Requirements.**

Commencement of Improvements. Before beginning construction of the improvements, PROPERTY OWNER is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of PROPERTY OWNER and its subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by CITY. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. Any deductibles or self-insured retentions must be declared to and approved by City. Coverages may be provided by PROPERTY OWNER's General Contractor if PROPERTY OWNER is not directly insuring such exposures under an "Owners and Contractors Protective Liability Policy (OCP)" on which CITY would be an additional insured. If PROPERTY OWNER will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then PROPERTY OWNER may opt to have all coverages provided by PROPERTY OWNER's General Contractor, provided that a written contract is executed between PROPERTY OWNER and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If PROPERTY OWNER fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, CITY may, at its sole discretion, purchase such coverage at PROPERTY OWNER's expense and deduct the cost from payments due to PROPERTY

OWNER, assess payment against Development, or terminate the Agreement for default. PROPERTY OWNER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to PROPERTY OWNER, at any time as deemed necessary to protect the interests of CITY.

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance ("CGL"): PROPERTY OWNER shall maintain CGL and shall include coverage for liability arising from PROPERTY OWNER's or its subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project" or "per location" basis, or (ii) the maximum amount of such insurance available to PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include blanket contractual and completed operations.

c. CGL policy will apply as though separate policies have been issued to each insured ("separation of insureds").

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

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

(4) Pollution (Environmental) Liability: The performance of PROPERTY OWNER's

work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. PROPERTY OWNER shall procure and maintain Pollution Liability covering PROPERTY OWNER'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 PROPERTY OWNER under PROPERTY OWNER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. PROPERTY OWNER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against CITY and CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) ALL policies except Workers Compensation:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

(c) Subcontractors. PROPERTY OWNER must ensure that each subcontractor is required to maintain the same insurance coverage required under this Section 15, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

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

Certificate Holder address:

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

16. **Non-Liability of Officials and Employees of CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
17. **Non-Discrimination.** PROPERTY OWNER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.
18. **Independent Contractor.** It is agreed to that PROPERTY OWNER shall act and be an independent contractor, and not an agent or employee of CITY.
19. **Compliance with Law.** PROPERTY OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
20. **Right to Inspect and Inspection Fees.** PROPERTY OWNER shall at all times maintain proper facilities and provide safe access for inspection for CITY and its employees to all parts of the Improvements. PROPERTY OWNER shall pay and reimburse CITY for all expenses incurred by CITY for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. CITY Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.
21. **Conflict of Interest and Reporting.** PROPERTY OWNER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
22. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. 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.

- a. Address of PROPERTY OWNER is as follows:

- b. Address of CITY is as follows:

City Engineer
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

23. **PROPERTY OWNER'S Representations.** This Agreement shall include application or items submitted by PROPERTY OWNER to CITY'S Planning Department, Building Department, Planning Commission, and City Council. In the event of any inconsistency between their representations and this Agreement, this Agreement shall govern.
24. **Licenses, Permits and Fees.** PROPERTY OWNER shall obtain a CITY Business License, all permits, and licenses as may be required by this Agreement.
25. **Familiarity with Improvements.** By executing this Agreement, PROPERTY OWNER warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the Improvements and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the Improvements under this Agreement. Should PROPERTY OWNER discover any conditions materially differing from those inherent in the Improvements or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at PROPERTY OWNER'S risk, until written instructions are received from CITY.
26. **Time of Essence.** Time is of the essence in the performance of this Agreement.
27. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion shall be assigned by PROPERTY OWNER without prior written consent of CITY.
28. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.
29. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.
30. **Indemnification.** PROPERTY OWNER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by PROPERTY OWNER, PROPERTY OWNER'S agents, officers, employees, subcontractors, or independent contractors hired by PROPERTY OWNER. The only exception to PROPERTY OWNER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PROPERTY OWNER.
31. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified on provisions waived only by subsequent mutual written agreement executed by CITY and PROPERTY OWNER.
32. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
33. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

34. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

35. **Agreement Runs With the Land.** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the issuance of the Development Permit and shall constitute a covenant running with the land and an equitable servitude upon the Development real property.

36. **Recording.** It shall be the responsibility of CITY to cause the executed Agreement to be recorded.

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

[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:

THE CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

"PROPERTY OWNER"

JTS Morgan Hill RE, LLC by
Braddock and Logan Services, it's manage

By: Joseph E. Raphael

Title: Joseph E. Raphael, President

Date: February 12, 2020

By: Thomas Thompson

Title: Chief Financial officer

Date: February 12, 2020

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

State of California

County of ~~Santa Clara~~ Contra Costa

On February 12 2020 before me, Veronica Rojas a Notary Public in and for said County and State, personally appeared Joseph E. Raphael proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

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

State of California

County of ~~Santa Clara~~ Contra Costa

On February 12 2020 before me, Veronica Rojas a Notary Public in and for said County and State, personally appeared Thomas Thompson proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A
IMPROVEMENTS AND
ESTIMATED COSTS OF IMPROVEMENTS
AS OF FEBRUARY 2020

SUMMARY

A. GRADING	\$37,200
B. PAVING & CONCRETE	\$956,370
C. STORM DRAIN	\$856,850
D. SANITARY SEWER	\$115,525
E. WATER	\$171,250
F. MISCELLANEOUS	<u>\$247,000</u>

Sub-Total Improvements: \$2,384,195

CONTINGENCY 10% **\$238,420**

Total Improvements: **\$2,622,615**

EXHIBIT "B"
FORM OF PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and _____ (hereinafter designated as "principal") have entered into an Improvement Agreement:

[ENTER PROPERTY OWNER NAME]
 [ENTER APN & ADDRESS]

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project [ENTER PROJECT NAME], is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and [ENTER SURETY NAME], as surety, are held and firmly bound unto the City of Morgan Hill, hereinafter called ("City"), in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: _____
 Address: _____
 Telephone No.: _____

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and

Performance Bond
 Page 1 of 3
 Version: December 2017

performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this _____ day of _____ 20 ____ .

Principal

Principal

By: _____
Surety

By: _____
Attorney-in Fact

By: _____
California Resident Agent

By: _____
Non-resident Agent - Attorney-in-Fact

APPROVED:

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Performance Bond
Page 2 of 3
Version: December 2017

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond
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Version: December 2017

EXHIBIT "C"
FORM OF LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.: _____
 Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and [ENTER PROPERTY OWNER NAME] (hereinafter designated as "the principal") have entered into an Improvement Agreement:

[ENTER PROPERTY OWNER NAME]
 [ENTER APN & ADDRESS]

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project [ENTER PROJECT NAME], is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill, hereinafter called "City," to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto City and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of _____ dollars (\$ _____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at _____,
 Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

Labor and Material Bond
 Page 1 of 3
 Version: December 2017

License No.: _____
 Address: _____
 Telephone No.: _____

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: _____
 Non-resident agent's office address: _____
 Telephone No.: _____

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this _____ day of _____ 20 ____ .

 Principal

 Principal

By: _____
 Surety

By: _____
 Attorney-in-Fact

By: _____
 California Resident Agent

By: _____
 Non-resident Agent - Attorney-in-Fact

APPROVED:

 Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

Labor and Material Bond

Page 2 of 3

Version: December 2017

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond

Page 3 of 3

Version: December 2017

EXHIBIT "D"
FORM OF WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and [ENTER NAME] (hereinafter designated as "Principal") have entered into an Improvement Agreement (hereinafter "Agreement"):

[ENTER PROPERTY OWNER NAME]
 [ENTER APN & ADDRESS]

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20_____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, the Principal is required to furnish a bond to guarantee and warrant the work required by said Agreement for a period of one year following the completion and acceptance by the City of the Improvements, against any defective work or labor performed, or defective materials furnished by Principal.

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of _____ dollars (\$____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If Principal faithfully carries out and performs its guarantee and warranty under the Agreement, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Principal promptly reimburses City for all loss and damage that City sustains because of Principal's failure to makes such repairs in accordance with the Agreement requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Warranty Bond
 Page 1 of 3
 Version: April 2019

Any notice to Surety may be given in the manner specified in the Agreement and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

This Bond will be governed by California law, and the venue for any dispute pursuant to this Bond will be in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

In witness whereof, this instrument has been duly executed by the principal and surety above named.

SURETY:

Date: _____

s/ _____

Name: _____

Title: _____

Principal:

Date: _____

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____

Date: _____

Donald A. Larkin, City Attorney

Warranty Bond
Page 2 of 3
Version: April 2019

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond
Page 3 of 3
Version: April 2019



CITY OF MORGAN HILL PUBLIC WORKS DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 - Office (408) 778-6480 Fax (408) 779-7236

FEE SCHEDULE: 01.15.2020

PROJECT INFO

TRACT # / APN: 726-25-061, 093, and 094

ADDRESS / LOT: _____

PROJECT DESC: Butterfield Village - Sutter Extension

APPLICANT INFO

APPLICANT NAME: Braddock and Logan

MAILING ADDRESS: _____

CITY, STATE, ZIP: _____

PHONE NUMBER: _____

DATE PREPARED: 2/9/2020

EXPIRATION DATE: n/a

CALCULATED BY: Charlie Ha

CHECKED BY: Charlie Ha

BUILDING PERMIT #: _____

BLD PERMIT ISS. DATE: _____

SEWER IMPACT FEES WITHIN RDA BOUNDARY

CHECK APPLICABLE SCENARIO BELOW

• COMMERCIAL OR INDUSTRIAL WITHIN RDA BOUNDARY

SEWER IMPACT FOR COMMERCIAL & INDUSTRIAL PROJECTS
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07 PER RES# 6082.

• RESIDENTIAL PROJECTS WITHIN RDCS DOWNTOWN AREA

SEWER IMPACT FOR SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL
TEMPORARILY ADJUSTED TO \$0 EFFECTIVE 02/05/07.

• NOT IN RDA AREA BOUNDARY

** BOTH NORMAL FEES AND ADJUSTED FEES ARE SUBJECT
TO ANNUAL CPI INCREASES.

☑ COMMERCIAL OR INDUSTRIAL SHELL

A baseline charge for Traffic and Sewer Impact Fees has been assessed
* * for this shell building permit application. Additional Traffic and Sewer
impact fees may be owed pending the submittal and review of a tenant
improvement building permit application for this project.

☑ THIS FEE SCHEDULE IS ESTIMATE ONLY

IF BOX ABOVE CHECKED: FEE SCHEDULE IS ONLY FOR ESTIMATE PURPOSES. FEE
SCHEDULE CALCULATED BASED ON INFORMATION PROVIDED TO CITY BY APPLICANT.
FINAL FEE SCHEDULE MAY DIFFER BASED UPON CHANGE IN SCOPE OF PROJECT.

MULTI-FAMILY IS DEFINED AS ANY UNIT WITH TWO BEDROOMS OR LESS.
SINGLE FAMILY IS DEFINED AS ANY UNIT WITH 3 BEDROOMS OR MORE.

1. METER DEPOSIT: 650-37672 Subtotal: \$0

1"	\$514	x	<u>0</u>	=	<u>\$0</u>
1 1/2"	\$1,600	x	<u>0</u>	=	<u>\$0</u>
2"	\$1,806	x	<u>0</u>	=	<u>\$0</u>
3" or larger-Time & Material + Meter Cost				=	<u>\$0</u>

METER CREDITS \$0 / x 0 / = \$0

2. BACKFLOW CONST. INSPECTION: 650-37859 Subtotal: \$0

\$68 x 0 Each = \$0

3a. WATER FRONTAGE CHARGE: 650-37663 Subtotal: \$0

1 Side	\$73	x	<u>0</u>	LF	=	<u>\$0</u>
2 Sides	\$40	x	<u>0</u>	LF	=	<u>\$0</u>

3b. SEWER FRONTAGE CHARGE: 640-37663 Subtotal: \$0

1 Side	\$73	x	<u>0</u>	LF	=	<u>\$0</u>
2 Sides	\$40	x	<u>0</u>	LF	=	<u>\$0</u>

3c. STORM FRONTAGE CHARGE: 304-37663 Subtotal: \$0

1 Side	\$120	x	<u>0</u>	LF	=	<u>\$0</u>
2 Sides	\$59	x	<u>0</u>	LF	=	<u>\$0</u>

3d. UNDERGROUNDING UTILITIES: 350-37649 Subtotal: \$0

1 Side	\$757	x	<u>0</u>	LF	=	<u>\$0</u>
2 Sides	\$382	x	<u>0</u>	LF	=	<u>\$0</u>

4. WATER IMPACT FEE: 651-37648 Subtotal: \$0

Single Family	\$3,913	/DU	x	0	DU	=	\$0
Multi Family	\$3,531	/DU	x	0	DU	=	\$0
Senior/Downtown	\$3,531	/DU	x	0	DU	=	\$0
Commercial	\$11,109	/AC	x	0	AC	=	\$0
Industrial	\$11,109	/AC	x	0	AC	=	\$0
Office	\$11,109	/AC	x	0	AC	=	\$0
Auto Dealership	\$11,109	/AC	x	0	AC	=	\$0
Hotel	\$11,109	/AC	x	0	AC	=	\$0

WATER CREDITS \$0 / x 0 / = \$0

5. SEWER IMPACT FEE: 641-37648 Subtotal: \$0

Single Family	\$15,315	/DU	x	0	DU	=	\$0
Multi Family	\$12,962	/DU	x	0	DU	=	\$0
Senior/Downtown	\$12,962	/DU	x	0	DU	=	\$0
Commercial	\$52.44	/GPD	x	0	GPD	=	\$0
Industrial	\$50.43	/GPD	x	0	GPD	=	\$0
Office	\$50.43	/GPD	x	0	GPD	=	\$0
Auto Dealership	\$50.43	/GPD	x	0	GPD	=	\$0
Hotel	\$50.43	/GPD	x	0	GPD	=	\$0

SEWER CREDITS \$0 / x 0 / = \$0

RDA SEWER CREDIT	Single Family	\$15,315	/DU	x	0	DU	=	\$0
	Multi Family	\$12,962	/DU	x	0	DU	=	\$0
	Commercial	\$52.44	/GPD	x	0	GPD	=	\$0
	Industrial	\$50.43	/GPD	x	0	GPD	=	\$0
	Office	\$50.43	/GPD	x	0	GPD	=	\$0
	Auto Dealership	\$50.43	/GPD	x	0	GPD	=	\$0
	Hotel	\$50.43	/GPD	x	0	GPD	=	\$0

6. STORM DRAIN IMPACT FEE: 303-37648 Subtotal: \$0

	Single Family	\$1,941	/DU	x	0	DU	=	\$0
>1,200 SF	Multi Family	\$1,105	/DU	x	0	DU	=	\$0
< 1,200 SF	Multi Family	\$514	/DU	x	0	DU	=	\$0
>1,200 SF	Senior/Downtown	\$1,105	/DU	x	0	DU	=	\$0
< 1,200 SF	Senior/Downtown	\$514	/DU	x	0	DU	=	\$0
	Commercial	\$21,018	/ACRE	x	0	AC	=	\$0
	Industrial	\$15,475	/ACRE	x	0	AC	=	\$0
	Office	\$21,018	/ACRE	x	0	AC	=	\$0
	Auto Dealership	\$12,018	/ACRE	x	0	AC	=	\$0
	Hotel	\$311	/ROOM	x	0	RM	=	\$0

STORM CREDITS \$0 / x 0 / = \$0

7. TRAFFIC IMPACT FEE: 309-37648 Subtotal: \$0

	Single Family	\$3,373	/DU	x	0	DU	=	\$0
>1,200 SF	Multi Family	\$2,090	/DU	x	0	DU	=	\$0
< 1,200 SF	Multi Family	\$1,316	/DU	x	0	DU	=	\$0
>1,200 SF	Senior/Downtown	\$2,090	/DU	x	0	DU	=	\$0
< 1,200 SF	Senior/Downtown	\$1,316	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0
	Commercial	\$3,373	/PHT	x	0	PHT	=	\$0
	Industrial	\$3,373	/PHT	x	0	PHT	=	\$0
	Office	\$3,373	/PHT	x	0	PHT	=	\$0
	Auto Dealership	\$3,373	/PHT	x	0	PHT	=	\$0
	Hotel	\$3,373	/PHT	x	0	PHT	=	\$0

TRAFFIC CREDITS \$0 /PHT x 0 PHT = \$0

8. PARK IMPACT FEE: 301-37648 Subtotal: \$0

Subdivision:	Single Family	\$5,807	/DU	x	0	DU	=	\$0
	Multi Family	\$5,595	/DU	x	0	DU	=	\$0
	Senior/Downtown	\$3,832	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0
No Subdivision	Single Family	\$4,222	/DU	x	0	DU	=	\$0
	Multi Family	\$4,072	/DU	x	0	DU	=	\$0
	Senior/Downtown	\$2,787	/DU	x	0	DU	=	\$0
	Secondary DU	TBD	/DU	x	0	DU	=	\$0

PARK CREDITS \$0 / x 0 / = \$0

8a. PARK MAINTENANCE DEV. FEE:						302-37649	Subtotal:	<u>\$0</u>
	\$0	/	x	0	EACH	=		\$0
9. PUBLIC FACILITIES IMPACT FEE:						347-37648	Subtotal:	<u>\$0</u>
Single Family	\$553	/DU	x	0	DU	=		\$0
Multi Family	\$532	/DU	x	0	DU	=		\$0
Senior/Downtown	\$365	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
Commercial	\$1,218	/ACRE	x	0	AC	=		\$0
Industrial	\$1,705	/ACRE	x	0	AC	=		\$0
Office	\$1,447	/ACRE	x	0	AC	=		\$0
Auto Dealership	\$488	/ACRE	x	0	AC	=		\$0
Hotel	\$14	/ROOM	x	0	RM	=		\$0
PUBLIC FACILITIES CREDITS	\$0	/	x	0	/	=		\$0
10. LIBRARY IMPACT FEE:						348-37648	Subtotal:	<u>\$0</u>
Single Family	\$2,132	/DU	x	0	DU	=		\$0
Multi Family	\$2,054	/DU	x	0	DU	=		\$0
Senior/Downtown/SDU	\$1,406	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
LIBRARY CREDITS	\$0	/	x	0	/	=		\$0
11. COMMNTY/REC CNTRS IMPACT FEE:						360-37648	Subtotal:	<u>\$0</u>
Single Family	\$3,955	/DU	x	0	DU	=		\$0
Multi Family	\$3,470	/DU	x	0	DU	=		\$0
Senior/Downtown	\$2,619	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
COMMNTY/REC CNTRS CREDITS	\$0	/	x	0	/	=		\$0
12. PUBLIC SAFETY FACILITIES IMPACT FEE:						311-37648	Subtotal:	<u>\$0</u>
Single Family	\$1,941	/DU	x	0	DU	=		\$0
>1,200 SF Multi Family	\$1,716	/DU	x	0	DU	=		\$0
< 1,200 SF Multi Family	\$1,285	/DU	x	0	DU	=		\$0
>1,200 SF Senior/Downtown	\$1,716	/DU	x	0	DU	=		\$0
< 1,200 SF Senior/Downtown	\$1,285	/DU	x	0	DU	=		\$0
Secondary DU	TBD	/DU	x	0	DU	=		\$0
Commercial	\$10,846	/ACRE	x	0	AC	=		\$0
Industrial	\$13,018	/ACRE	x	0	AC	=		\$0
Office	\$13,003	/ACRE	x	0	AC	=		\$0
Auto Dealership	\$5,202	/ACRE	x	0	AC	=		\$0
Hotel	\$60	/ROOM	x	0	RM	=		\$0
POLICE CREDITS	\$0	/	x	0	/	=		\$0
13. ENGINEERING & INSPECTION FEE:						206-38734	Subtotal:	<u>\$232,790</u>
ENGR ESTIMATE:	\$2,622,615	13.3%	\$1	to	\$100,000	=		\$13,300
ENGR EST. DATE:	Feb-20	11.8%	\$100,001	to	\$200,000	=		\$11,800
		10.3%	\$200,001	to	\$500,000	=		\$30,900
		8.8%	OVER		\$500,000	=		\$186,790
DEPOSIT PAID						=		\$10,000
14. LONG RANGE PLANNING FEE:						207-37912	Subtotal:	<u>\$36,418</u>
LONG RANGE PLANNING FEE (15% of E&I)						=		\$36,418
15. GIS FEE:						206-37913	Subtotal:	<u>\$12,139</u>
GIS/TECHNOLOGY FEE (5% of E&I)						=		\$12,139
16. MAP CHECK FEE:						206-38716	Subtotal:	<u>\$0</u>
PARCEL MAP:						\$5,752	=	\$0
TRACT MAP:						\$9,184	=	\$0

232-38145

Subtotal:	\$0
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Single Family	\$222	/DU	x	<u>0</u>	DU	=	<u>\$0</u>
Multi Family	\$222	/DU	x	<u>0</u>	DU	=	<u>\$0</u>
Secondary DU	TBD	/DU	x	<u>0</u>	DU	=	<u>\$0</u>
Commercial	\$1,551	/AC	x	<u>0</u>	AC	=	<u>\$0</u>
Industrial	\$1,551	/AC	x	<u>0</u>	AC	=	<u>\$0</u>

Subtotal:	\$0
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	Certificate of Compliance	\$	3,734	206-38430	=	\$0
	Lot Line Adjustment/Merger	\$	3,129	206-38712	=	\$0
	Engineering Services	\$	202 /hr	206-38719	=	\$0
	Public Easement Review	\$	2,523	206-38737	=	\$0
	Street Vacation Review	\$	202 /hr	206-38737	=	\$0
	Easement Abandonment	\$	4,440	206-38737	=	\$0
	Plan Revision Review	\$	505 /hr	206-38737	=	\$0
	Reimbursement Agreement	\$	2,187	206-38741	=	\$0
	FEMA Compliance Letter - Base Fee	\$	403	206-38725	=	\$0
	FEMA Comp. Letter w/ CLMOR/LOMR	\$	2,220	206-38725	=	\$0
	FEMA Comp. Letter w/ Pub. Outreach	\$	808	206-38725	=	\$0
	Storm Water Runoff Mangnt Plan Review	\$	2,826	206-38734	=	\$0
	SWPPP Document Review 1st	\$	1,211	232-37687	=	\$0
	SWPPP Document Review 2nd	\$	751	232-37687	=	\$0
	SWPPP Offsite Inspection - 6 month	\$	6,055	232-37688	=	\$0
	SWPPP Offsite Inspection - 12 month	\$	12,110	232-37688	=	\$0
	SWPPP Offsite Inspection - 24 month	\$	24,220	232-37688	=	\$0
RDCS	School Pedestrian Safety	\$		355-37655	=	\$0
RDCS	Public Facilities	\$		346-37649	=	\$0
RDCS	Park Development	\$		302-37649	=	\$0
RDCS	Public Facilities Circulation	\$		346-37649	=	\$0
RDCS	LED Streetlight Fund	\$		010-37722	=	\$0

TOTAL FEES DUE: \$281,348

Notes & Comments:



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Inga Alonzo, Management Analyst

APPROVED BY: No

PURCHASE OF TWELVE CITY TRUCKS

RECOMMENDATION(S)

1. Approve the purchase of twelve (12) City trucks in the amount of \$587,634;
2. Authorize City Manager to approve purchase order in the amount of \$587,634 with National Auto Fleet Group;
3. Declare vehicles W06165, W10167, W07129, S07158, E08153, E08156, R08102, R11120, R08118, R07150, D08121, and D08100 to be surplus; and
4. Authorize the disposal of the surplus vehicles in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The Utilities, Engineering, and Maintenance Divisions are proposing to purchase twelve (12) trucks to replace vehicles in the current fleet which are all several years past their scheduled service life of seven years. Staff prepared detailed specifications for each of the vehicles based on division needs. The new vehicles are equipped differently depending on the intended use for each vehicle. Examples of specialized equipment includes lifting cranes, toolboxes, arrow boards, and safety equipment such as warning lights and flashers.

Staff requested quotes from the National Auto Fleet Group, using the Sourcewell cooperative purchasing arrangement. The National Auto Fleet Group provided detailed quotes for each vehicle and equipment and met all the required specifications. The quotes for each vehicle are summarized in Table 1, below.

Staff has reviewed the National Auto Fleet Group quote and has determined that it is accurate and responsive to each request for quote. Staff is therefore recommending the purchase of the twelve vehicles described herein be awarded to the National Auto Fleet Group and that the purchase be completed using the Sourcewell purchasing cooperative contract #120716-NAF.

The Sourcewell purchasing arrangement is consistent with Section 3.04.180 of the Morgan Hill Municipal Code, which allows the purchasing officer the authority to join with other public jurisdictions in cooperative purchasing plans or programs, including,

but not limited to California Communities Purchasing Program (CCPP), the California Department of General Services (CADGS), the California Multiple Award Schedule (CMAS), the National Association of Counties (NACo), or similar arrangements or plans, as determined by the purchasing officer to be in the City's best interest. Sourcewell (formerly the National Joint Powers Alliance), supports cooperative purchasing by using the buying power of over 50,000 member organizations in government, education and non-profit. The City has previously attempted to purchase vehicles locally at equivalent prices and local vendors have not been able to match pricing or have been non-responsive.

Staff is also recommending that the vehicles being replaced be declared as surplus to be disposed via auction, to obtain the highest possible revenue from the surplus sale.

Table 1. City Truck Purchases and Replacements

Vehicle Type	Quantity	Quotes	Replacing Vehicle #	Division
2020 Ford F-150 XL 4WD SuperCab 6.5' Box 145" WB with Harbor Equipment	3	\$134,763	W06165, W10167, W07129	Water
2020 Ford Super Duty F-250 SRW XL 4WD SuperCab 8' Box 164" WB, Harbor Equipment	1	\$63,254	S07158	Wastewater
2020 Ford Ranger XL 2WD SuperCab 6' Box 126.8" WB, Harbor Equipment	2	\$70,412	E08153, E08156	Engineering
2020 Ford Super Duty F-250 SRW XL 4WD SuperCab 8' Box 164" WB	1	\$38,237	D08121	Streets
2020 Ford Super Duty F-250 SRW XL 2WD SuperCab 8' Box 164" WB	1	\$37,232	R08118	Parks
2020 Ford Super Duty F-450 DRW XL 2WD SuperCab 168" WB 60" CA, Scezli Crown	1	\$104,550	D08100	Streets
2020 Ford Super Duty F-350 SRW XL 2WD SuperCab 168" WB 60" CA, Scelzi Upfit	1	\$65,653	R07150	Parks
2020 Ford F-150 XL 2WD Reg Cab 8' Box 141" WB	1	\$30,206	R11120	Parks
2020 Ford Super Duty F-250 SRW XL 2WD SuperCab 8' Box 164" WB, Harbor Equipment	1	\$43,327	R08102	Parks
Total Purchase Price	12	\$587,634		

COMMUNITY ENGAGEMENT: None

The replacement of vehicles for the operations within the Engineering and Utilities and Community Services Departments are necessary functions to support basic operations of the City and therefore no community engagement was performed.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the recommended purchase and direct staff to solicit quotes/bids through a formal bidding process.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no previous actions relating to the purchase of the specific vehicles outlined in the report. The City Council did appropriate funding for the vehicles during the mid-cycle budget update in June 2019.

FISCAL AND RESOURCE IMPACT:

The vehicle replacement purchases are included in the Fiscal Year 2019-20 budget within the Equipment Replacement Fund (790), where adequate funds are set aside for these replacements.

The revenue received from the surplus sales will be deposited into the Equipment Replacement Fund as well, to credit towards future replacement vehicles.

CEQA (California Environmental Quality Act):

Not a Project.

Continuing administrative or maintenance activities, including the replacement of equipment, is not a project subject to environmental review.

LINKS/ATTACHMENTS:

1. 2020 Sourcewell Replacement Vehicle Quotes (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Yat Cho, Senior Project Manager

APPROVED BY: No

AWARD MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT

RECOMMENDATION(S)

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to recognize \$338,260 as grant revenue and appropriate an additional \$376,959 in the Park Impact Fund (301), for the Madrone Channel Trail Improvements Project;
2. Approve the Madrone Channel Trail Improvements Phase I Project Plans and Specifications;
3. Award contract to Terramark General Engineering Contractors, Inc. for the Madrone Channel Trail Improvements Phase I Project in the amount of \$254,400;
4. Authorize expenditure of construction contingency funds not to exceed \$25,440; and
5. Authorize the City Manager to execute and administer the construction contract with Terramark General Engineering Contractors, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

The Madrone Channel Trail has been identified in the Bikeways, Trails, Park and Recreation Master Plan as a key improvement for the City's Bikeway System. The trail travels the length of the City adjacent to Highway 101 from Cochrane Avenue to Tennant Avenue (Attachment 1). Currently, this trail is a dirt maintenance road that the City utilizes as a trail through a joint-use agreement with Valley Water.

The Madrone Channel Trail Improvements Phase I Project was advertised in January 2020. Phase I involves improving the trail between Cochrane Avenue and East Main Avenue. The base bid scope of work includes paving approximately 1.1 miles of Class I Trail with a 2' wide aggregate base shoulder at both sides. The additive alternate for the project included a pressure-treated header board along the edges of the Class I Trail.

The bid opening was held on February 18, 2020 and the bid result was as follows:

	Base Bid	Additive Alternate	Subtotal
Terramark General Engineering Contractors, Inc.	\$254,400	\$180,400	\$434,800
Tri Valley Excavation Co. Inc.	266,836	110,000	376,836
Guerra Construction Group	274,540	55,000	329,540
R&M Paving Contractors, Inc.	297,840	63,800	361,640
ASG Builders	299,000	77,000	376,000
Silicon Valley Paving, Inc.	309,919	77,000	386,919
Gradetech, Inc.	319,700	220,000	539,700
McKim Corporation	325,756	71,280	397,036
American Asphalt Repair & Resurfacing Co., Inc.	330,000	99,000	429,000
Lewis & Tibbitts, Inc.	356,193	37,170	393,363
DRYCO Construction, Inc.	357,800	77,000	434,800
Granite Rock Company	362,100	126,500	488,600
Suarez & Munoz Construction, Inc.	372,520	77,000	449,520
Wattis Construction, Inc.	406,725	104,500	511,225
Innovate Concrete, Inc.	550,406	96,030	646,436

The bid proposals received were structured such that the lowest base bid was the lowest responsible bidder. For this project, the lowest responsible bidder was Terramark General Engineering Contractors, Inc.

Terramark General Engineering Contractors, Inc.'s bid, including the additive alternative, is approximately 77% higher than the engineer's estimate of \$245,000. The variance between the engineer's estimate and the lowest responsible bid is mostly due to the cost of installing the pressure-treated header boards.

Terramark General Engineering Contractors, Inc. is an experienced contractor for this work and has demonstrated in their bid proposal they have performed similar work previously. Staff recommends the award of this project without the additive alternative, in the amount of \$254,400. Additionally, staff recommends a 10% contingency (\$25,440) for this project. The project is scheduled to begin in April 2020 and expected to be completed by June 2020, assuming no significant delays.

The project plans and specifications may be found on the City's website in the Community Projects page (<http://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>).

COMMUNITY ENGAGEMENT: Involve and Inform

Adding a paved bike and pedestrian trail to the Madrone Channel Trail was discussed and brought forward by community members during the development of the City's Bikeways, Trails, Parks and Recreation Master Plan. The local Morgan Hill Bicycle and

Pedestrian Advocacy Group has advocated for a paved pathway on the Madrone Channel Trail to support a better connection from the Downtown to the northwestern section of Morgan Hill and the Coyote Creek Trailhead. During construction, staff will inform the community regarding the progress of this project using media, social media, and the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to not award this construction contract and direct staff to re-bid the project in hopes of obtaining a lower bid proposal. However, this does not guarantee that the new bid amounts will be lower and would delay the project by a minimum of four months. This project is grant funded, which may cause additional delays or risks to funding, if re-bidding the project is to be completed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 20, 2017 – Adopted the Bikeways, Trails, Parks and Recreation Master Plan.

January 23, 2019 – Resolution Authorizing Santa Clara Valley Water District Safe, Clean Water Grant Application.

May 15, 2019 – Adopt Resolution Authorizing Transportation Development Act Article 3 Grant Application.

February 19, 2020 – Approve Funding Agreement and Budget Amendment for Madrone Channel Trail Improvements Project Grant.

FISCAL AND RESOURCE IMPACT:

The overall total project cost for the project is \$401,959 and includes construction, project implementation, tree planting outside of the scope of work for this project, permit fees, design, and other construction related expenses.

The adopted FY 2019-20 – FY2023-24 Capital Improvement Program for this project (#117018) includes a budget of \$25,000, and with an additional appropriation of \$376,959, this project will be fully funded (Attachment 2).

Out of the overall total cost of \$401,959, \$371,660 will be reimbursed through three grants, and the remaining \$30,299 would be funded from the Park Impact Fund (301), where there are sufficient funds to cover this portion. Table below outlines the appropriations and funding sources.

Description	Amount
Budget	
Total Budget for Phase 1 Madrone Trail Project	\$ 401,959
Existing Appropriations in Adopted CIP	(25,000)
Additional Appropriations Needed	\$ 376,959

Funding Sources	
Valley Water – Safe Clean Water Grant	120,000
MTC – Transportation Development Act (TDA) Grant	218,260
Transportation Fund for Clean Air (TFCA)	33,400
City of Morgan Hill – Park Impact Fund (301)	30,299
TOTAL	401,959

The contract amount for the construction portion of this project with Terramark General Engineering Contractors, Inc. is \$254,400. Additionally, staff is requesting an authorization of 10% contingency of \$25,440, for a total of \$279,840, for the construction portion.

CEQA (California Environmental Quality Act):
Categorically Exempt.

The proposed improvements of the Madrone Channel Trail Improvements Phase I Project is categorically exempt from CEQA under Section 15304, Minor Alterations to Land, which covers minor public or private alterations to the condition of land, water, and/or vegetation which do not include removal of healthy, mature, scenic trees for forestry or agricultural purposes, including the creation of bicycle lanes on existing right-of-way.

LINKS/ATTACHMENTS:

1. Location Map
2. Resolution Madrone Channel Trail Improvements Phase I



CITY OF MORGAN HILL
Engineering and Utilities Department
CIP Engineering Division

Document Path: C:\Users\lavizcarra\Desktop\GIS\SiteMap_MadoneChannelPHASE1.mxd

MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE 1 PROJECT



0 500 1,000 2,000 3,000 4,000
 Feet

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 ADOPTED BUDGET TO APPROPRIATE \$376,959 IN THE PARK IMPACT FUND (301) FOR THE MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT**

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

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 4th day of March 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. 20-0XX, adopted by the City Council at the meeting held on the 4th day of March 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 #

019

FUND:

301 Park Impact Fund

DEPARTMENT:

8051 Park Development

OBJECT:

86360 CONSTRUCTION

AGENDA DATE:

03/04/20

AGENDA ITEM TITLE:

Madrone Channel Trail Improvements Phase I

	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	-	63,400	1,310,000	(1,246,600)
RECOMMENDED ACTION		338,260	376,959	(38,699)
RESULT OF RECOMMENDED ACTION	4,116,066	3,049,222	6,867,761	297,527



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: No

ADOPT ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2316, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

On February 19, 2020, the City Council introduced Ordinance No. 2316 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

The adoption of the ordinance is an administrative step required by California Public Employees Retirement System (CalPERS) to amend the pension contract. The amendment will bring the CalPERS contract in alignment with the current approved Memoranda of Understanding.

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 adopted 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. Ordinance 2316 CalPERS Contract Amendment

ORDINANCE NO. 2316, NEW SERIES

**AN ORDINANCE 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 A, 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 3: 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 AT A REGULAR MEETING OF
THE CITY COUNCIL HELD ON THE 19th DAY OF FEBRUARY 2020, AND WAS
FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4th
DAY OF MARCH 2020, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED
IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TOREZ, City Clerk

Attachment: Ordinance 2316 CalPERS Contract Amendment (2670 : Adopt Ordinance 2316 CalPERS Contract Amendment)

∞ 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. 2316, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 4th day of March 2020.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2316 CalPERS Contract Amendment (2670 : Adopt Ordinance 2316 CalPERS Contract Amendment)

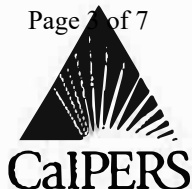


EXHIBIT A

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

DRAFT



Meeting Minutes 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 5, 2020 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 6:00 pm for the purpose of conducting a closed session.

6:00 pm Closed Session

7:00 pm Regular Meeting

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

SPECIAL MEETING

6:00 PM Closed Session

CALL TO ORDER

Mayor Constantine called the special meeting to order at 6:00 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Minutes Acceptance: Minutes of Feb 5, 2020 6:00 PM (CONSENT CALENDAR)

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Yvonne Martinez Beltran	Mayor Pro Tem	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment opened at 6:01 pm.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:02 pm.

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

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

One Case

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Manager

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Attorney

REGULAR MEETING

7:00 PM

CONVENE REGULAR MEETING

The regular meeting convened at 7:02 pm.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action from one of the three closed session items and the other two items were continued to the end of the regular meeting.

Minutes Acceptance: Minutes of Feb 5, 2020 6:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Spring shared that he, along with Council Member Carr, is a member of the South County Regional Wastewater Authority (SCRWA) which oversees the wastewater system we share with Gilroy. One of the topics you will be hearing more about is the need to expand the facility. If you have any questions about the facility, please feel free to reach out to Council Members Spring or Carr or attend an upcoming SCRWA meeting. He spoke about his assignment to the Santa Clara Valley Habitat Agency (Agency) Governing and Implementation Boards. He shared that the Agency just bought over 600 acres of the Tilton Ranch and is in conversations with the owners to buy the remainder of the ranch for preservation. He encouraged people to check out their website to learn more about the work they are doing.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She shared that this summer, young women between the ages of 14 and 18, can attend Camp Cinder in Shasta for free. You can learn more by going to the CalFire website or to the City Website. She announced that the City is looking for volunteers to help with the Census count, specifically to help count those that are considered hard to count. We are looking for volunteers to help between March and May, to among other things, help staff a questionnaire assistance center. You can learn more about this opportunity on our website. She concluded by mentioning that the City will be providing fact sheets and information related to Measure A including what the measure is, why it is on the ballot, transient occupancy taxes versus sales tax, and speak generally to hotels. Measure A is a measure on the March 3, 2020 ballot related to two proposed hotels. As the City we can only provide information. This information will also be available on the City website.

OTHER REPORTS

Mayor Pro Tem Martinez Beltran spoke regarding her work on the Silicon Valley Clean Energy (SVCE) Board. She shared that she attended a League meeting last week with Council Member McKay, where they received an update on housing, the RHNA goals, upcoming legislation, homeless shelters, and affordable housing.

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT 1

The public comment opened at 7:12 pm. The following people were called to speak:

Joe Baranowski

Julie Hutcheson

Greg Leonard

Nick Thorp

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1, 2, and 4, through 8.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Mayor Pro Tem
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

1. ACCEPT NOVEMBER 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

2. INFORMATION TECHNOLOGY BUDGET INCREASE

Recommendation:

Adopt resolution amending the adopted 2019-20 Fiscal Year Budget appropriating \$160,000 from the Information Services Fund (730) for critical technology upgrades.

3. ITEM PULLED FOR DISCUSSION

4. APPROVE GROUND LEASE AGREEMENT FOR EQUIPMENT SHELTER AT COMMUNITY PARK BETWEEN THE CITY OF MORGAN HILL AND LCB COMMUNICATIONS LLC

Recommendation:

Approve a five-year Ground Lease Agreement, with an option to extend for two additional five-year terms, between the City of Morgan Hill and LCB Communications LLC, for a small communications equipment shelter to be generally located at the far southwestern corner of Community Park.

5. APPROVE PURCHASE OF PROPERTY (KIM & HWANG) APN 726-21-006 FOR THE MAIN AVENUE BIKE LANE AND SIDEWALK PROJECT

Recommendation:

1. Adopt resolution approving the purchase of a portion of APN 726-21-006 for \$101,277 plus escrow and closing costs from Kevin Kim and Jessica Hwang for the Main Avenue Bike Lane and Sidewalk Project; and
2. Authorize the Public Services Director to execute all documents and make minor modifications as necessary in order to consummate the transaction.

Minutes Acceptance: Minutes of Feb 5, 2020 6:00 PM (CONSENT CALENDAR)

6. APPROVE THE JANUARY 15, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

7. APPROVE THE JANUARY 24, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE JANUARY 25, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FOR DISCUSSION**3. APPROVE CHANGE TO LIBRARY, CULTURE AND ARTS COMMISSION TERMS**

Recommendation:

Approve transition to four year terms for the Library, Culture and Arts Commission.

Council Services and Records Manager Michelle Bigelow provided the report and answered questions.

MOTION:

Approving the recommended action.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

PUBLIC HEARING**9. ADOPT RESOLUTION AUTHORIZING THE COUNTY TO COMMENCE 2020 HAZARDOUS VEGETATION ABATEMENT PROGRAM**

Recommendation:

1. Open/Close public hearing;
2. Adopt resolution A authorizing Santa Clara County to commence hazardous vegetation abatement activities on the attached list; and
3. Adopt resolution B authorizing Santa Clara County to commence hazardous vegetation abatement activities for the remaining parcel.

Program Administrator Anthony Eulo provided the report.

The public hearing opened at 7:38 pm. The following people were called to speak:

Lou DeLurgio

Mike Shropshire

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

MOTION:

Adopting resolution A authorizing Santa Clara County to commence hazardous vegetation abatement activities on the attached list removing 2990 Thomas Grade from the list and deputizing the Fire Marshall to review the 1270 Almond Orchard Dr property to determine if the property should be removed from the list.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Mayor Pro Tem
AYES: Constantine, Martinez Beltran, Carr, McKay, Spring

MOTION:

Adopt resolution B authorizing Santa Clara County to commence hazardous vegetation abatement activities for the remaining parcel.

RESULT: ADOPTED [4 TO 0]
MOVER: Larry Carr, Council Member
SECONDER: Rene Spring, Council Member
AYES: Constantine, Martinez Beltran, Carr, Spring
ABSTAIN: McKay

OTHER BUSINESS

10. HOLD PUBLIC HEARING AND TABULATE BALLOTS FOR JACKSON MEADOWS #6 AND MILL CREEK SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing for Jackson Meadows #6;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close Jackson Meadows #6 public hearing;
6. Open public hearing for Mill Creek;
7. Accept public input on ballot proceeding;
8. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
9. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
10. Close public hearing for Mill Creek;
11. Take ten-minute recess for ballot tabulation;
12. Accept verbal report from Deputy City Clerk on Jackson Meadows #6 ballot tabulation results; and
13. Accept verbal report from Deputy City Clerk on Mill Creek ballot tabulation results;
14. Adopt Resolution A or B certifying the Jackson Meadows #6 ballot proceeding results; and
15. Adopt Resolution A or B certifying the Mill Creek ballot proceeding results.

Maintenance Coordinator Keri Russell provided the report.

The public hearing opened at 8:03 pm.

The Mayor announced that the close of the public hearing is pending and any property owner wishing to withdraw their ballot must do so now.

The Mayor announced that the close of the public hearing is pending and any property owner wishing to submit a ballot must do so now.
There being no requests to speak, the public hearing closed.

The public hearing opened at 8:05 pm.
The Mayor announced that the close of the public hearing is pending and any property owner wishing to withdraw their ballot must do so now.
The Mayor announced that the close of the public hearing is pending and any property owner wishing to submit a ballot must do so now.
There being no requests to speak, the public hearing closed.

The meeting recessed at 8:05 pm to tabulate the ballots.
The meeting reconvened at 8:17 pm.

MOTION:

Adopting resolution B certifying the Jackson Meadows #6 ballot proceeding results. The assessment ballot did not receive a majority of voting property owners in support, resulting in the maximum assessment rate for the Jackson Meadows #6 Subarea of the District not increasing.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Mayor Pro Tem
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

MOTION:

Adopting resolution A certifying the Mill Creek ballot proceeding results. The assessment ballot received a majority in support, resulting in the maximum assessment rate for the Mill Creek Subarea of the District increasing at the beginning in the 2020-2021 Fiscal Year to \$285.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

11. RECEIVE LEGISLATIVE UPDATE FOR THE POLICE DEPARTMENT

Recommendation:

Accept report.

Police Chief David Swing provided the presentation and report.

The public comment opened at 8:57 pm.
Sally Casas was called to speak.
There being no further requests to speak, the public comment closed.

RESULT:	ACCEPT REPORT
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12. UPDATES TO SUSTAINABLE MORGAN HILL, ONGOING PRIORITIES, AND 2020-21 STRATEGIC PRIORITIES

Recommendation:

Adopt updates to Sustainable Morgan Hill and ongoing priorities and establish the City Council's 2020-21 Strategic Priorities.

City Manager Christina Turner provided the report and presentation.

Minutes Acceptance: Minutes of Feb 5, 2020 6:00 PM (CONSENT CALENDAR)

The public comment opened at 9:10 pm.
Sue Olt was called to speak.
There being no requests to speak, the public comment closed.

MOTION:

Adopting the updates to Sustainable Morgan Hill and ongoing priorities and establish the City Council's 2020-21 Strategic Priorities modifying the ongoing priority of protecting the environment to read protecting the environment and preserving open space and agricultural lands.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Mayor Pro Tem
SECONDER:	John McKay, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

13. APPROVE UPDATED CITY COUNCIL POLICIES: 97-01 RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED, 99-01 SELECTION OF MAYOR PRO TEMPORE, 94-09 PROCLAMATION/RECOGNITION POLICY, AND ADOPT UPDATED RESOLUTION AUTHORIZING MAYOR AND/OR CITY MANAGER TO PREPARE, EXECUTE, AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE, COUNTY, OR REGIONAL BOARDS' LEGISLATION OR ACTION THAT MAY HAVE AN IMPACT UPON THE CITY

Recommendation:

1. Approve updated City Council Policies: 97-01 Rules for the Conduct of City Council Meetings, Placement of Items on the Agenda, and Matters to be Reconsidered, 99-01 Selection of Mayor Pro Tempore, and 94-09 Proclamation/Recognition Policy; and
2. Approve updated resolution authorizing the Mayor and/or City Manager to prepare, execute, and transmit communications indicating a position on proposed State, County, or regional boards' legislation or action 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.

City Manager Christina Turner provided the report and presentation.

The public comment opened at 9:22 pm.
Joe Baranowski was called to speak.
There being no requests to speak, the public comment closed.

MOTION:

Approving the updated City Council Policies: 97-01 Rules for the Conduct of City Council Meetings, Placement of Items on the Agenda, and Matters to be Reconsidered, 99-01 Selection of Mayor Pro Tempore, and 94-09 Proclamation/Recognition Policy; and Approve updated resolution authorizing the Mayor and/or City Manager to prepare, execute, and transmit communications indicating a position on proposed State, County, or regional boards' legislation or action 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.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 9:35 pm.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 9:36 pm.

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

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

One Case

RECONVENE

The meeting reconvened at 10:28 pm.

City Attorney Donald Larkin announced there was no reportable action.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:29 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

DRAFT



Meeting Minutes 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 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:01 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Yvonne Martinez Beltran	Mayor Pro Tem	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

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 announced that February is Black History Month and spoke about influential Black Americans. She shared that she recently attended the Association for Bay Area Governments meeting, the Silicon Valley Clean Energy Summit in Washington DC., met with the Gamma Alpha Kappas, and lastly attended the Census luncheon at Gavilan College.

CITY MANAGER'S REPORT

City Manager Christina Turner shared that last Friday, the City hosted Leadership Morgan Hill's Local Government Day. She provided an update on our Fire Team. Since the beginning of the year, they have performed CPR on five patients within the City limits. Fire Department personnel, working alongside AMR, have been successful in regaining a pulse in four out of the five cases, which is a success rate of 80%. This is a testimony to our highly trained and motivated fire team as one of the EMS calls required our fire fighters to perform over 2500 chest compressions.

CITY ATTORNEY'S REPORT

No reports.

OTHER REPORTS

No reports.

PUBLIC COMMENT

The public comment opened at 7:36 pm. The following people were called to speak:

Matthew Tinsley

Joe Baranowski

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Mayor Pro Tem
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 and 3 through 8.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

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. ITEM PULLED FOR DISCUSSION

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.

ITEM PULLED FOR DISCUSSION

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.

The public comment opened at 7:43 pm.

Gary Hansen was called to speak.

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

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Mayor Pro Tem
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

The meeting recessed at 7:53 pm.

The meeting reconvened at 8:00 pm.

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.

Finance Director Dat Nguyen provided the report.

The public hearing opened at 8:01 pm.

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

MOTION:

Adopting the 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.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Mayor Pro Tem
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

OTHER BUSINESS

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

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided the report and presentation.

The public comment opened at 8:08 pm.

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

RESULT: ACCEPT REPORT

11. CITY OF MORGAN HILL WEBSITE UPDATE

Recommendation:

Receive update on City of Morgan Hill website.

Council Services and Records Manager Michelle Bigelow presented the report and answered questions.

The public comment opened at 8:27 pm.

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

RESULT: ACCEPT REPORT

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:29 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 4, 2020

PREPARED BY: Hilary Holeman, Administrative Analyst

APPROVED BY: No

RECEIVE REPORT FROM VALLEY WATER ON ANDERSON DAM AND CONSIDER CITY POSITION ON AB 3005 EXPEDITED DAM SAFETY FOR SILICON VALLEY ACT

RECOMMENDATION(S)

1. Receive verbal report from Valley Water on Anderson Dam;
2. Consider supporting AB 3005 (R. Rivas) Expedited Dam Safety for Silicon Valley Act; and
3. Direct staff to submit letter in support of AB 3005 to the appropriate representatives.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Maintaining Infrastructure

Supporting Our Youth

Seniors

and Entire Community

Preserving and Cultivating Public Trust

Advancing Regional Initiatives

REPORT NARRATIVE:

The Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District (Valley Water), has been determined by local, state, and federal officials to be at risk of an uncontrolled release of water, caused by an earthquake, that could inundate cities and rural areas from San Francisco Bay south to Monterey Bay, including much of Morgan Hill.

On Friday, February 21, 2020, the City was informed by Valley Water that the Federal Energy Regulatory Commission (FERC) sent a letter ordering them to: 1) maintain the reservoir at a level no higher than 565 feet elevation during this year's rainy season; 2) by October 1, 2020, begin draining Anderson Reservoir to a 488 foot elevation, which would bring it to a condition known as "deadpool;" and 3) within 30 days, develop a plan and schedule for constructing a larger outlet to keep the reservoir drained until the dam can be replaced.

Valley Water has been working closely with federal and state regulatory agencies on the Anderson Dam Seismic Retrofit Project (Anderson Project), which will remove and

replace the outdated, 70-year old dam. This project is the Valley Water Board of Directors' highest health and safety priority.

The FERC order underscores the importance of completing the Anderson Project as quickly as possible. Valley Water is sponsoring state legislation, AB 3005 (Attachment 1), authored by Assembly Member Robert Rivas, to expedite the rebuild of Anderson Dam and has requested that the City of Morgan Hill also support the bill.

The health and safety of Morgan Hill residents is the City's number one priority. AB 3005 will help ensure the state does its part to expeditiously eliminate the risk of a devastating loss of life, property, and thousands of Silicon Valley businesses. The bill smartly authorizes the Anderson Project to use the "Best Value" method of contractor selection. A project of this size and importance should be awarded to the most qualified contractors offering the best value, and not necessarily to the lowest bidder. In matters of public safety, expert construction is critical. More details are provided in Valley Water's Expedited Dam Safety for Silicon Valley Fact Sheet (Attachment 2).

Staff recommends that the Council formally support AB 3005 and direct staff to submit a letter (Attachment 3) expressing the City's support and urging the Legislature to support this critically important bill to protect Silicon Valley from the devastating impacts of dam failure during an earthquake.

COMMUNITY ENGAGEMENT: Inform

The City's future public education materials regarding the Anderson Project will reflect the City's support for AB 3005, if approved, as a component of informing the community about this important public project.

ALTERNATIVE ACTIONS:

1. Revise the letter of support.
2. Decline sending the letter of support.

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 - Supporting legislation is an administrative activity that will not have a direct physical impact on the environmental and is, therefore, not a project as defined by the CEQA Guidelines. Without question, the Anderson Project itself will be the subject of extensive environmental review under both State and Federal environmental impact law.

LINKS/ATTACHMENTS:

1. AB3005 Bill Text

2. Valley Water Expedited Dam Safety for Silicon Valley Fact Sheet
3. AB3005 Anderson Dam.Letter of Support

ASSEMBLY BILL**No. 3005**

Introduced by Assembly Member Robert Rivas
(Coauthors: Assembly Members Berman, Chu, and Gallagher)
(Coauthors: Senators Beall, Caballero, Hill, Monning, and Nielsen)

February 21, 2020

An act to add Section 1602.5 to the Fish and Game Code, to add Section 21163 to the Public Contract Code, to add Chapter 6.8 (commencing with Section 21189.60) to Division 13 of the Public Resources Code, and to add Section 13260.1 to, and to add Part 4 (commencing with Section 6700) to Division 3 of, the Water Code, relating to the Leroy Anderson Dam and Reservoir, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3005, as introduced, Robert Rivas. Leroy Anderson Dam and Reservoir: environmental review, permitting, and public contracting.

Existing law prohibits an entity from diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or banks of, a river, stream, or lake, or depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake, unless the Department of Fish and Wildlife receives written notification regarding the activity and the department either determines that the activity will not substantially adversely affect an existing fish and wildlife resource or, if the department determines that the activity may substantially adversely affect an existing fish and wildlife resource, the department issues a final agreement to the entity that includes reasonable measures necessary to protect the affected resource.

This bill would require the department, within 15 days of receipt of the notification from the Santa Clara Valley Water District, to inform the department whether the Anderson Dam project, as defined, will not substantially adversely affect an existing fish and wildlife resource. If the department determines that the project will substantially adversely affect an existing fish and wildlife resource, the bill would specify the process by which the department is to issue a final agreement to the district that includes reasonable measures necessary to protect the affected resource.

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 (EIR) 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 establishes administrative procedures for the review and certification of the EIR for a project and judicial review procedures for any action or proceeding brought to challenge the lead agency's decision to certify the EIR or to grant project approvals.

This bill would establish specified procedures for the administrative and judicial review of the environmental review and approvals granted for the Anderson Dam project, as defined, located in the County of Santa Clara. The bill would apply certain rules of court establishing procedures requiring actions or proceedings seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court to an action or proceeding seeking judicial review of the lead agency's action related to the Anderson Dam project under CEQA.

Existing law requires specified persons to file with the appropriate regional water quality control board a report of waste discharge relative to any material change or propose change in the character, location, or volume of discharge into the waters of the state. Existing law requires the regional board to prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, as specified.

This bill would require the State Water Resources Control Board, within 120 days of receipt of a report of waste discharge from the district with respect to the Anderson Dam project, to prescribe requirements as to the nature of the proposed discharge, as provided.

This bill would authorize state agencies with permitting authority over the Anderson Dam project to take certain actions to expedite the permitting process for the project, including entering into an agreement for the recovery of certain costs.

Existing law authorizes certain local entities to select a bidder for a contract on the basis of “best value,” as defined. Existing law governs various types of contract procedures applicable to the Santa Clara Valley Water District and prescribes competitive bidding procedures for any improvement or unit of work over \$50,000.

This bill would authorize the district, upon approval by the board of directors of the district, to award contracts on a best value basis for any work of construction to retrofit, repair, or replace the Leroy Anderson Dam and Reservoir, owned by the district and located in the County of Santa Clara. The bill would require the district, if the board elects to award contracts on a best value basis, to comply with specified requirements governing the documents prepared setting forth the scope and estimated price of the project and the request for qualifications. The bill would prohibit a best value contractor from being prequalified or shortlisted unless the contractor provides an enforceable commitment to the district that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project, in accordance with certain criteria. By requiring certain information of bidders to be certified under penalty of perjury, the bill would expand an existing crime, thereby imposing a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Santa Clara Valley Water District.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The Leroy Anderson Dam and Reservoir, owned by the
4 Santa Clara Valley Water District and located in the County of
5 Santa Clara, is the largest reservoir in the county with a capacity
6 of 89,278 acre-feet, and is a critical part of the region's water
7 supply system.

8 (b) A breach of the Leroy Anderson Dam at full capacity could
9 have catastrophic consequences, including inundation of a land
10 area extending more than 30 miles northwest to San Francisco
11 Bay, including the Cities of Milpitas, San Jose, Santa Clara, and
12 Sunnyvale, and more than 40 miles southeast to Monterey Bay,
13 including the Cities of Gilroy, Morgan Hill, and Watsonville. This
14 area includes a significant part of region known as Silicon Valley
15 and is home to thousands of job-creating businesses that drive the
16 regional, state, and national economies.

17 (c) The dam has been determined by the Santa Clara Valley
18 Water District, the Department of Water Resources Division of
19 Safety of Dams, and the Federal Energy Regulatory Commission
20 to be at risk of an uncontrolled release of water due to a seismic
21 event. The district has adopted a restriction that is equivalent to
22 58 percent of the reservoir's capacity. To further protect public
23 safety, the Santa Clara Valley Water District also reduces the
24 reservoir's storage before the rainy season to decrease the chance
25 that the restricted capacity is exceeded.

26 (d) Built in 1950 to the seismic and dam safety standards of the
27 day, the dam would not withstand the largest likely earthquake,
28 known as the maximum credible earthquake, on the nearby
29 Calaveras and Coyote Creek faults. A 2008 seismic stability
30 evaluation identified potential embankment instability as a result
31 of seismic shaking and liquefaction. In 2012, voters in the County
32 of Santa Clara approved of a parcel tax that paid for the initiation
33 of the Anderson Dam Seismic Retrofit Project, and will pay for a
34 portion of the overall project costs. By 2016, findings from the
35 geotechnical and geologic investigations performed during the
36 project's design phase led to the conclusion that a more extensive
37 dam retrofit than had originally been envisioned would have to be
38 performed, causing a necessary delay and redesign of the project.

1 (e) In February 2017, an atmospheric river event, which
2 conveyed a series of wet storms to the region, triggered the use of
3 the dam's spillway, increasing the flow in Coyote Creek beyond
4 capacity, flooding homes and businesses in the City of San Jose,
5 and causing the evacuation of 14,000 people. The dam's outlet,
6 used to draw down the reservoir in an emergency, is too small by
7 modern standards, and in advance of the 2017 storms, the outlet
8 had been releasing as much water as possible for more than a
9 month.

10 (f) The Santa Clara Valley Water District's Anderson Dam
11 Seismic Retrofit Project will remove and replace the dam. It will
12 be constructed to modern seismic and dam safety standards,
13 including increased capacities for the dam's spillway and outlet
14 to allow a rapid, controlled draw down in an emergency and to
15 enhance incidental flood protection. The project design is now 75
16 percent complete.

17 (g) The project is complex and must be evaluated under both
18 state and federal environmental laws. To help protect public safety,
19 the environment, and a significant portion of the San Francisco
20 Bay area economy, state permitting agencies should ensure that
21 permit review and approval is completed expeditiously.

22 (h) The independent Board of Consultants, convened pursuant
23 to the Federal Energy Regulatory Commission process, has
24 recommended the "best value" procurement method for the
25 Anderson Dam Seismic Retrofit Project due to its complex design,
26 delivery, and installation. Authorizing this project for an alternative
27 method of contract award, similar to other major surface storage
28 projects, is in keeping with construction industry practices and is
29 prudent for a project of this scale and importance.

30 (i) Timely completion of the Anderson Dam Seismic Retrofit
31 Project will reduce the risks to public safety and the California
32 economy stemming from the outdated design of the existing dam.

33 (j) The replacement of the Leroy Anderson Dam is of statewide
34 importance and that the project warrants expedited permit
35 processing, as well as other actions by the state that will further
36 support the timely delivery of a well-constructed dam replacement
37 to protect public safety.

38 SEC. 2. Section 1602.5 is added to the Fish and Game Code,
39 to read:

1 1602.5. (a) For purposes of this section, the following
2 definitions apply:

3 (1) “Anderson Dam project” or “project” has the same meaning
4 as set forth in Section 6700 of the Water Code.

5 (2) “District” means the Santa Clara Valley Water District.

6 (3) “Notification” means the documents described in
7 subparagraphs (A) to (E) of paragraph (1) of subdivision (a) of
8 Section 1602.

9 (b) Notwithstanding any other law, the department shall comply
10 with both of the following:

11 (1) Within 15 days of receipt of a notification from the district
12 pursuant to Section 1602, the department shall inform the district,
13 in writing, whether the project will not substantially adversely
14 affect an existing fish or wildlife resource.

15 (2) If the department determines that the project will
16 substantially adversely affect an existing fish and wildlife resource,
17 within 45 days of the determination, the department shall issue a
18 draft agreement to the district that includes reasonable measures
19 necessary to protect the fish and wildlife resources adversely
20 affected by the project. Within 15 days of receipt of the draft
21 agreement, the district shall notify the department whether the
22 measure is acceptable. If the draft agreement is not acceptable, the
23 district shall notify the department in writing and specify measures
24 that are not acceptable. Within 15 days of receipt of the district’s
25 notification that the draft agreement is not acceptable, the
26 department and the district shall meet for purposes of resolving
27 their disagreement. Within 15 days of the meeting, the department
28 shall issue a final agreement that includes reasonable measures
29 agreed upon by the department and district that are necessary to
30 protect fish and wildlife resources adversely affected by the project.

31 SEC. 3. Section 21163 is added to the Public Contract Code,
32 to read:

33 21163. (a) As used in this section:

34 (1) “Best value” means a procurement process whereby the
35 selected bidder may be selected on the basis of objective criteria
36 for evaluating the qualifications of bidders with the resulting
37 selection representing the best combination of price and
38 qualifications.

39 (2) “Best value contract” means a competitively bid contract
40 entered into pursuant to this section.

1 (3) “Best value contractor” means a properly licensed person,
2 firm, or corporation that submits a bid for, or is awarded, a best
3 value contract.

4 (4) “District” means the Santa Clara Valley Water District.

5 (5) “Project labor agreement” has the same meaning as in
6 paragraph (1) of subdivision (b) of Section 2500.

7 (b) Upon the approval of the board, the district may award
8 contracts on a best value basis for any work of construction to
9 retrofit, repair, or replace the Leroy Anderson Dam and Reservoir,
10 owned by the district and located in the County of Santa Clara,
11 including any upstream or downstream construction or operational
12 improvements for flood protection, environmental restoration, or
13 fish passage that may be required to implement that work.

14 (c) If the board elects to award a contract on a best value basis
15 pursuant to the authorization in subdivision (b), the district shall
16 comply with the following:

17 (1) The district shall prepare a set of documents setting forth
18 the scope and estimated price of the project. The documents may
19 include, but need not be limited to, the size, type, and desired
20 design character of the project, performance specifications covering
21 the quality of materials, equipment, workmanship, preliminary
22 plans or layouts, or any other information deemed necessary to
23 adequately describe the district’s needs. The performance
24 specifications and any plans shall be prepared by a design
25 professional who is duly licensed and registered in California.

26 (2) The district shall prepare and issue a request for
27 qualifications in order to prequalify or short-list the entities,
28 including subcontractors and suppliers, whose bids shall be
29 evaluated for final selection. The request for qualifications shall
30 include, but need not be limited to, the following elements:

31 (A) Identification of the basic scope and needs of the project or
32 contract, the expected cost range, the methodology that will be
33 used by the district to evaluate bids, the procedure for final
34 selection of the bidder, and any other information deemed
35 necessary by the district to inform interested parties of the
36 contracting opportunity.

37 (B) Significant factors that the district reasonably expects to
38 consider in evaluating qualifications, including technical
39 design-related expertise, construction expertise, acceptable safety
40 records, and all other non-price-related factors.

1 (C) A standard template request for statements of qualifications
2 prepared by the district. In preparing the standard template, the
3 district may consult with the construction industry, the building
4 trades and surety industry, and other local agencies with experience
5 awarding a contract on a best value basis. The template shall
6 require all of the following information:

7 (i) If the bidder is a privately held corporation, limited liability
8 company, partnership, or joint venture, composed of privately held
9 entities, a listing of all of the shareholders, partners, or members
10 known at the time of statement of qualification submission who
11 will perform work on the project.

12 (ii) Evidence that the members of the contracting team have
13 completed, or demonstrated the experience, competency, capability,
14 and capacity to complete, projects of similar size, scope, or
15 complexity and that proposed key personnel have sufficient
16 experience and training to competently manage and complete the
17 project, and a financial statement that ensures that the bidder has
18 the capacity to complete the project.

19 (iii) The licenses, registration, and credentials required for the
20 project, including, but not limited to, information on the revocation
21 or suspension of any license, credential, or registration.

22 (iv) Evidence that establishes that the bidder has the capacity
23 to obtain all required payment and performance bonding, liability
24 insurance, and errors and omissions insurance.

25 (v) Information concerning workers' compensation experience
26 history and a worker safety program.

27 (vi) An acceptable safety record. "Safety record" means the
28 prior history concerning the safe performance of construction
29 contracts. The criteria used to evaluate a bidder's safety record
30 shall include, at a minimum, its experience modification rate for
31 the most recent three-year period, and its average total recordable
32 injury or illness rate and average lost work rate for the most recent
33 three-year period.

34 (vii) The information required under this paragraph shall be
35 certified under penalty of perjury by the bidder and its general
36 partners or joint venture members.

37 (d) (1) A best value contractor shall not be prequalified or
38 shortlisted unless the contractor provides an enforceable
39 commitment to the district that the contractor and its subcontractors
40 at every tier will use a skilled and trained workforce to perform

1 all work on the project or contract that falls within an
 2 apprenticeable occupation in the building and construction trades,
 3 in accordance with Chapter 2.9 (commencing with Section 2600)
 4 of Part 1.

5 (2) This subdivision shall not apply if any of the following
 6 requirements are met:

7 (A) The district has entered into a project labor agreement that
 8 will bind all contractors and subcontractors performing work on
 9 the project or contract to use a skilled and trained workforce, and
 10 the contractor agrees to be bound by that project labor agreement.

11 (B) The contractor has entered into a project labor agreement
 12 that will bind the contractor and all its subcontractors at every tier
 13 performing the project or contract to use a skilled and trained
 14 workforce.

15 SEC. 4. Chapter 6.8 (commencing with Section 21189.60) is
 16 added to Division 13 of the Public Resources Code, to read:

17
 18 CHAPTER 6.8. ANDERSON DAM SEISMIC RETROFIT PROJECT
 19

20 21189.60. For purposes of this chapter, the following
 21 definitions apply:

22 (a) "Anderson Dam project" or "project" means any activity or
 23 work of construction to retrofit, repair, or replace the Leroy
 24 Anderson Dam and Reservoir, owned by the Santa Clara Valley
 25 Water District and located in the County of Santa Clara, including
 26 any upstream or downstream construction or operational
 27 improvements for flood protection, environmental restoration, or
 28 fish passage that may be required to implement that activity or
 29 work.

30 (b) "District" means the Santa Clara Valley Water District.

31 (c) "Permit" means a permit, agreement, certification, approval,
 32 authorization, permission, notice to proceed, or directive, or
 33 issuance of this document, from a state agency that is necessary
 34 for the project to proceed.

35 (d) "State agency" means a state agency, board, commission,
 36 or department with the authority to issue permits that would
 37 authorize the project or project-related work.

38 21189.61. (a) Rules 3.2220 to 3.2237, inclusive, of the
 39 California Rules of Court, as may be amended by the Judicial
 40 Council, shall apply to any action or proceeding brought to attack,

1 review, set aside, void, or annul the certification of any
2 environmental impact report for the project or granting of any
3 project approvals to require the actions or proceeding, including
4 any potential appeals therefrom, to be resolved, to the extent
5 feasible, within 270 days of the filing of the certified record of
6 proceedings with the court. On or before April 1, 2021, the Judicial
7 Council shall amend the California Rules of Court, as necessary,
8 to implement this subdivision.

9 (b) Notwithstanding any other law, the procedures set forth in
10 this chapter shall apply to an action or proceeding brought pursuant
11 to this division to attack, review, set aside, void, or annul the
12 certification of the environmental impact report for the Anderson
13 Dam project or the granting of any project approvals.

14 21189.62. (a) The lead agency shall prepare and certify the
15 record of proceedings in accordance with this section and in
16 accordance with Rule 3.1365 of the California Rules of Court.

17 (b) No later than three business days following the date of the
18 release of the draft environmental impact report, the lead agency
19 shall make available to the public in a readily accessible electronic
20 format the draft environmental impact report and all other
21 documents submitted to or relied on by the lead agency in the
22 preparation of the draft environmental impact report. A document
23 prepared by the lead agency after the date of the release of the
24 draft environmental impact report that is a part of the record of
25 proceedings shall be made available to the public in a readily
26 accessible electronic format within five business days after the
27 document is prepared or received by the lead agency.

28 (c) Notwithstanding subdivision (b), documents submitted to
29 or relied on by the lead agency that cannot lawfully be released to
30 the public pursuant to law or that were not prepared specifically
31 for the Anderson Dam project and are copyright protected are not
32 required to be made readily accessible in an electronic format. For
33 those copyright protected documents, the lead agency shall make
34 an index of these documents available in an electronic format no
35 later than the date of the release of the draft environmental impact
36 report, or within five business days if the document is received or
37 relied on by the lead agency after the release of the draft
38 environmental impact report. The index must specify the libraries
39 or lead agency offices in which hard copies of the copyrighted
40 materials are available for public review.

1 (d) The lead agency shall encourage written comments on the
2 project, to be submitted in a readily accessible electronic format,
3 and shall make any such comment available to the public in a
4 readily accessible electronic format within five days of its receipt.

5 (e) Within seven business days after the receipt of any comment
6 that is not in an electronic format, the lead agency shall convert
7 that comment into a readily accessible electronic format and make
8 it available to the public in that format.

9 (f) The lead agency shall indicate in the record of proceedings
10 comments received that were not considered by the lead agency
11 pursuant to subdivision (d) of Section 21189.65 and need not
12 include the content of the comments as a part of the record of
13 proceedings.

14 (g) Within five days after the filing of the notice required by
15 subdivision (a) of Section 21152, the lead agency shall certify the
16 record of proceedings for the approval or determination and shall
17 provide an electronic copy of the record of proceedings to a party
18 that has submitted a written request for a copy. The lead agency
19 may charge and collect a reasonable fee from a party requesting
20 a copy of the record of proceedings for the electronic copy, which
21 shall not exceed the reasonable cost of reproducing that copy.

22 (h) Within 10 days after being served with a complaint or a
23 petition for a writ of mandate, the lead agency shall lodge a copy
24 of the certified record of proceedings with the superior court.

25 (i) Any dispute over the content of the record of proceedings
26 shall be resolved by the superior court. Unless the superior court
27 directs otherwise, a party disputing the content of the record of
28 proceedings shall file a motion to augment the record of
29 proceedings at the time it files its initial brief.

30 (j) The contents of the record of proceedings shall be as set forth
31 in subdivision (e) of Section 21167.6.

32 21189.63. (a) The draft and final environmental impact report
33 shall include a notice in not less than 12-point type stating the
34 following:

35
36 THIS EIR IS SUBJECT TO CHAPTER 6.8 (COMMENCING
37 WITH SECTION 21189.60) OF DIVISION 13 OF THE PUBLIC
38 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER
39 THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER
40 CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE

1 PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY
2 JUDICIAL ACTION CHALLENGING THE CERTIFICATION
3 OF THE EIR OR THE APPROVAL OF THE PROJECT
4 DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES
5 SET FORTH IN SECTIONS 21189.61 TO 21189.64, INCLUSIVE,
6 OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER
7 6.8 (COMMENCING WITH SECTION 21189.60) OF DIVISION
8 13 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN
9 THE APPENDIX TO THIS EIR.

10
11 (b) The draft environmental impact report and final
12 environmental impact report shall contain, as an appendix, the full
13 text of this chapter.

14 21189.64. (a) Within 10 days after the release of the draft
15 environmental impact report, the lead agency shall conduct an
16 informational workshop to inform the public of the key analyses
17 and conclusions of that report.

18 (b) Within 10 days before the close of the public comment
19 period, the lead agency shall hold a public hearing to receive
20 testimony on the draft environmental impact report. A transcript
21 of the hearing shall be included as an appendix to the final
22 environmental impact report.

23 (c) (1) Within five days following the close of the public
24 comment period, a commenter on the draft environmental impact
25 report may submit to the lead agency a written request for
26 nonbinding mediation. The lead agency shall participate in
27 nonbinding mediation with all commenters who submitted timely
28 comments on the draft environmental impact report and who
29 requested the mediation. Mediation conducted pursuant to this
30 paragraph shall end no later than 35 days after the close of the
31 public comment period.

32 (2) A request for mediation shall identify all areas of dispute
33 raised in the comment submitted by the commenter that are to be
34 mediated.

35 (3) The lead agency shall select one or more mediators who
36 shall be retired judges or recognized experts with at least five years
37 of experience in land use and environmental law or science, or
38 mediation.

1 (4) A mediation session shall be conducted on each area of
2 dispute with the parties requesting mediation on that area of
3 dispute.

4 (5) The lead agency shall adopt, as a condition of approval, any
5 measures agreed upon by the lead agency and any commenter who
6 requested mediation. A commenter who agrees to a measure
7 pursuant to this paragraph shall not raise the issue addressed by
8 that measure as a basis for an action or proceeding challenging the
9 lead agency's decision to certify the environmental impact report
10 or to grant one or more initial project approvals.

11 (d) The lead agency need not consider written comments
12 submitted after the close of the public comment period, unless
13 those comments address any of the following:

14 (1) New issues raised in the response to comments by the lead
15 agency.

16 (2) New information released by the public agency subsequent
17 to the release of the draft environmental impact report, such as
18 new information set forth or embodied in a staff report, proposed
19 permit, proposed resolution, ordinance, or similar documents.

20 (3) Changes made to the project after the close of the public
21 comment period.

22 (4) Proposed conditions for approval, mitigation measures, or
23 proposed findings required by Section 21081 or a proposed
24 reporting or monitoring program required by paragraph (1) of
25 subdivision (a) of Section 21081.6, where the lead agency releases
26 those documents subsequent to the release of the draft
27 environmental impact report.

28 (5) New information that was not reasonably known and could
29 not have been reasonably known during the public comment period.

30 21189.65. Except as otherwise provided expressly in this
31 chapter, nothing in this chapter affects the duty of any party to
32 comply with this division.

33 21189.66. The provisions of this chapter are severable. If any
34 provision of this chapter or its application is held invalid, that
35 invalidity shall not affect other provisions or applications that can
36 be given effect without the invalid provision or application.

37 SEC. 5. Part 4 (commencing with Section 6700) is added to
38 Division 3 of the Water Code, to read:

PART 4. ANDERSON DAM

6700. (a) For purposes of this part, the following definitions apply:

(1) “Anderson Dam project” or “project” means any activity or work of construction to retrofit, repair, or replace the Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District and located in the County of Santa Clara, including any upstream or downstream construction or operational improvements for flood protection, environmental restoration, or fish passage that may be required to implement that activity or work.

(2) “District” means the Santa Clara Valley Water District.

(3) “Permit” means a permit, agreement, certification, approval, authorization, permission, notice to proceed, or directive, or issuance of this document, from a state agency that is necessary for the project to proceed.

(4) “State agency” means a state agency, board, commission, or department with the authority to issue permits that would authorize the project or project-related work.

(b) A state agency may do any of the following:

(1) Enter into an agreement with the district to recover costs for actions authorized by this section that are above the usual level of service provided by the state agency to expedite the review of environmental documents prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or permit processing and approval for the Anderson Dam project with the goal of compliance with this division and completing permit review and approval in an expeditious manner.

(2) Hire or compensate staff or contract for services needed to achieve the goals described in paragraph (1).

(3) Work collaboratively with local, state, and federal agencies on an integrated regulatory approach similar to efforts implemented by the state permitting agencies for projects funded by the San Francisco Bay area Measure AA, the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Program.

(c) This section does not limit the authority or discretion of a state agency with regards to processing a permit application, the issuance of a permit, or any conditions that may be required in conjunction with the issuance of a permit.

(d) The Federal Energy Regulatory Commission, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the United States Environmental Protection Agency may, and are encouraged to, participate in any integrated regulatory approach authorized by this section.

SEC. 6. Section 13260.1 is added to the Water Code, to read:
13260.1. (a) For purposes of this section, the following definitions apply:

(1) "Anderson Dam project" or "project" has the same meaning as set forth in Section 6700.

(2) "District" means the Santa Clara Valley Water District.

(b) Notwithstanding any other law, within 120 days of receipt of a report of waste discharge from the district with respect to the Anderson Dam project pursuant to Section 13260, the board shall prescribe requirements as to the nature of the proposed discharge. Consistent with Section 13263, the requirements shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the requirements of Section 13241.

SEC. 7. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the findings set forth in Section 1 of this act.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

1 The Leroy Anderson Dam, located in the County of Santa Clara,
2 has been determined by local, state, and federal officials to be at
3 risk of an uncontrolled release of water caused by an earthquake.
4 A breach of the dam at full capacity would have catastrophic
5 consequences for life and property, inundating an area extending
6 more than 30 miles northwest to San Francisco Bay, including the
7 Cities of Milpitas, San Jose, Santa Clara, and Sunnyvale, and more
8 than 40 miles southeast to Monterey Bay, including the Cities of
9 Gilroy, Morgan Hill, and Watsonville. Expedited action by state
10 government is necessary in order to reduce the risk to life and
11 property and the state and national economies. Therefore, it is
12 necessary that this act take effect immediately.

O

Expedited Dam Safety for Silicon Valley Act



BILL SUMMARY

The Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District (Valley Water), has been determined by local, state, and federal officials to be at risk of an uncontrolled release of water, caused by an earthquake, that could inundate cities and rural areas from San Francisco Bay south to Monterey Bay, including much of Silicon Valley.

The Expedited Dam Safety for Silicon Valley Act will facilitate the speedy and expert construction of the Anderson Dam Seismic Retrofit Project.

Expert Construction

Authorize "best value" selection of the construction contractor and require a skilled and trained workforce for project.

Timely Court Decisions

Provide expedited judicial review of challenges to environmental documents issued in compliance with the California Environmental Quality Act (CEQA).

Faster Permitting

Require expedited processing of state permits by the Department of Fish and Wildlife and the State Water Resources Control Board, with costs covered by Valley Water, not the state.

BACKGROUND

Protects Lives & Property from Dam Failure

Built in 1950 to the safety standards of the day, Anderson Dam would not withstand the current maximum credible earthquake on the nearby Calaveras and Coyote Creek faults. A breach of the dam at full capacity would have catastrophic consequences for life and property, inundating an area extending more than 30 miles northwest to San Francisco Bay, including the cities of San José, Santa Clara, Sunnyvale, and Milpitas, and more than 40 miles southeast to Monterey Bay, including the cities of Morgan Hill, Gilroy, and Watsonville.

Reduces Flood Risk for Downstream Communities

In February 2017, a series of wet storms filled Anderson Reservoir, resulting in flows over the dam's spillway that were beyond the capacity of Coyote Creek. The creek flooded homes and businesses in economically diverse neighborhoods in

San José, including disadvantaged communities and communities of color, requiring the evacuation of 14,000 people. The dam's outlet, used to draw down the reservoir in an emergency, is too small by modern standards. In advance of the 2017 storms, the outlet had been releasing as much water as possible for over a month and still the dam spilled.

Clean, Safe Drinking Water for Silicon Valley

Anderson is the largest reservoir in Santa Clara County and it is a critical part of the region's drinking water supply. With a capacity of nearly 90,000 acre-feet, it holds enough water to supply a million people for a year. Anderson is larger than all of Valley Water's other reservoirs combined, and is a vital local source of water.

THE PROJECT

Critical Dam Safety Improvements

The Anderson Dam Seismic Retrofit Project is estimated to cost \$563 million and will remove and replace the existing earthen dam. The new dam will be constructed to modern seismic and dam safety standards, including increased capacities for the spillway and outlet to allow a rapid, controlled draw down in an emergency. These features increase dam safety and incidental flood protection. The project design is 75% complete and incorporates the best available geologic, geotechnical, and conservation biology data. The draft Environmental Impact Report (EIR) will be released in the summer of 2020 and the final EIR will be certified by April 2021 with construction to start in October 2022.



Anderson Dam spillway flow cascades into Coyote Creek behind neighborhood

SMART POLICY TO PROTECT LIVES, PROPERTY, AND JOBS

Protects and Creates Jobs for California

Silicon Valley is the world leader in technology-based job creation. Protecting this vital economic engine from inundation and flooding is of critical life safety and economic importance to California. The project will create 5,400 good-paying jobs over a period of 9 years with a multiplying effect on regional economic activity reaching far beyond the half-billion-dollar infrastructure investment.

Expert Construction for a Complex Project

The Federal Energy Regulatory Commission (FERC) independent Board of Consultants has recommended the “best value” procurement method for the Anderson Dam project due to its complex design, delivery, and installation. Other California water storage projects have been authorized to use best value procurement to choose the most qualified contractors and doing the same for Anderson is prudent for a project of this scale and importance.

Resolve Legal Challenges Quickly

Expedited judicial review of CEQA challenges has been authorized for other high-profile projects to shorten the time between the certification of the environmental impact report (EIR) and the start of construction. Sports arenas and the new state legislative office building have been authorized for this expedited judicial review process while adhering to state environmental standards. Anderson is an urgent project needed to prevent a catastrophic loss of life in one of California’s largest metropolitan areas, and the project merits expedited treatment by the state’s court system.



Maximum Flood Area from Anderson Dam Failure

Expedite Permits to Protect the Environment and Public Safety

The permitting of the Anderson project will require interagency cooperation at every level of government. This bill would require the Department of Fish and Wildlife to expedite streambed alteration agreements and require the State Water Resources Control Board to expedite waste discharge permits. Pre-consultation with state and federal permitting agencies has already begun, and there will be ample time to consider significant environmental impacts, mitigation, and appropriate permit conditions. The purpose is to protect our natural resources with the timely review and approval of permits, expediting the delivery of critical public safety benefits.

Costs Paid Locally, Not by the State

State permitting agencies are authorized to charge fees for permit processing. However, expedited treatment of permitting for the Anderson Dam project could result in additional state costs not contemplated in the existing fee schedules. This bill authorizes any state agency to enter an agreement with Valley Water to ensure state costs associated with expedited permitting will be covered by Valley Water, and not be borne by the state.



Aerial view of Anderson Dam



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

March 4, 2020

The Honorable Robert Rivas
Member, California State Assembly
State Capitol, Room 5158
Sacramento, CA 95814

Subject: AB 3005 (R. Rivas) Expedited Dam Safety for Silicon Valley Act - SUPPORT

Dear Assembly Member Rivas,

On behalf of the City of Morgan Hill, I would like to express our strong support for your bill, AB 3005, which will expedite the expert removal and replacement of the Leroy Anderson Dam and Reservoir. Located in Morgan Hill, this dam has been determined by dam safety officials to be vulnerable to damage during a 6.6 magnitude earthquake and failure with a 7.25 quake. The failure of Anderson Dam at full capacity would result in catastrophic losses of life and property, inundating an area that includes not just our community, but a large swath of cities to the north and south. The social and economic costs would be felt immediately at the local and regional levels.

AB 3005 will help ensure the state does its part to expeditiously eliminate the risk of a devastating loss of life, property, and thousands of job-creating Silicon Valley businesses. The bill smartly authorizes the Anderson Dam Seismic Retrofit Project (Anderson Project) to use the “Best Value” method of contractor selection. A project of this size and importance should be awarded to the most qualified contractors offering the best value, and not necessarily to the lowest bidder. In matters of public safety, expert construction is critical.

This bill also requires expedited judicial review of challenges to environmental documents issued in compliance with the California Environmental Quality Act (CEQA). This is the same treatment afforded to selected sports arenas and the new legislative office building in Sacramento, none of which have the urgent public safety benefits of this project. Because court delays would increase the risk to public safety, it makes sense that these provisions apply to the Anderson Project.

Another critical component of delivering the Anderson Project’s public safety, water supply, and flood protection benefits is the timely issuance of state permits. AB 3005 sets reasonable deadlines for state permit issuance in order to help ensure construction starts promptly after design and CEQA review are completed. Not only will the Anderson Project protect our residents and businesses from inundation and destruction, this project will create 5,400 good paying jobs with an economic impact multiplied across the California economy.

The City of Morgan Hill thanks you for authoring AB 3005, and urges your colleagues in the Legislature to support, and Governor Newsom to sign, this critically important bill to protect Silicon Valley from the devastating impacts of dam failure during an earthquake.

Sincerely,

Rich Constantine
Mayor

Cc: 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

Attachment: AB3005 Anderson Dam.Letter of Support [Revision 1] (2671 : City Position on AB 3005 Expedited Dam Safety)

From: Joe Baranowski
To: [Michelle Bigelow](#); [Rich Constantine](#); [Rene Spring](#); [Yvonne Martinez Beltran](#); [Larry Carr](#); [John McKay](#)
Cc: [Christina Turner](#)
Subject: Request to remove Agenda Item 5 from Consent Calendar at March 4, 2020 City Council Meeting
Date: Wednesday, March 4, 2020 1:11:21 PM

Michelle & City Council members,

Regarding City Council March 3, 2020 Meeting **Agenda Item 5: APPROVAL OF A CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR)**

I will be asking that the agenda item referenced above be removed from tonight's consent calendar and public comment be allowed.

The agreement in question has nine pages of various terms and conditions and the only thing it says about expected conduct in the duty of the services they will provide is in clause six "Performance of Work" which (in part) states:

"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."

In July 2018, while acting as 'CEQA lead' on the Shoe Palace Project, David J. Powers CLEARLY violated the above clause when he wrote the City:

Hi, attached please find our revised scope of work, the schedule has been reduced by nine weeks from initial version, primarily by simplifying the traffic analysis and shortening internal review times. The cost came down as well, reflecting the simpler traffic analysis. Other options to reduce the schedule include selecting a 20-day public review for the MND, rather than the 30-days City has been opting to provide."

We investigated the possibility of preparing an Addendum (which would avoid the need altogether for a public review period) and should discuss that option by phone. If there is a good time for a short call this week, let us know.

Despite the City Attorney's defense of the above described actions at the Oct 2, 2019 City Council meeting, is this Council really in agreement that looking for ways that would purposely keep a project the scale of Shoe Palace from public review no matter whether the idea was implemented or not is consistent with a level of care that YOU EXPECT from ANY consultant let alone one tasked with the critical job of performing an Environmental Review? If yes, I believe you owe the public an explanation of why. If the City Council

wants to defend such actions of a consultant, what does it say about the expectations you have for anyone working for the City?

There are MANY citizens like me who will not trust any work produced by a consultant that has demonstrated such a brazen and complete disregard for transparency and we do not want our tax dollars being used on something that would be worthless. I ask that you consider:

- 1) Terminating the contract being reviewed and reach agreement with a different consultant for the work that remains to be done. (I do understand the item before you is 'work in progress'.)
- 2) Removing David J Powers and Hexagon Transportation (who is a listed subcontractor in the referenced contract) from consideration of any future work for the City whether such work is paid for directly by the City or from any third party.
- 3) Given the importance of the CEQA process and that the above standard clause under 'Performance of Work' is generic in nature and was obviously abused at least once, add the following clause to any future contract that is for any CEQA related work:

Adherence to public participation and transparency CEQA Purposes:

The purpose of the California Environmental Quality Act (CEQA) is to:

- 1) Prevent or minimize significant, avoidable damage to the environment
- 2) Disclose potential environmental effects of a proposed discretionary project, through a variety of publicly accessible documents.
- 3) Encourage public participation in the environmental review and decision-making process.
- 4) Ensure transparency in governmental decision-making process.

CONSULTANT represents they have read and understand that services shall be performed in accordance with the above CEQA purposes and the CITY Manager of CITY is authorized and shall terminate this AGREEMENT in whole if any actions contrary to the public participation and transparency purposes is suggested, implemented, discussed or otherwise violated.

Thank you,

Joe Baranowski

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.



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, March 4, 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

Aquatics Foundation Donation
Tim Thornton, Brian Kennedy, Denean Smith and Matt Kennedy

RECOGNITIONS

Edward Boss Prado Foundation- Magical Bridge Inclusive Playground Donation
Cecelia Ponzini

CITY COUNCIL REPORTS

Council Member McKay

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. ACCEPT JANUARY 2020 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

2. ACCEPT DONATION FROM EDWARD BOSS PRADO FOUNDATION FOR MORGAN HILL MAGICAL BRIDGE INCLUSIVE PLAYGROUND

Recommendation:

1. Accept a donation of \$70,000 from the Edward Boss Prado Foundation for construction and maintenance of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

3. APPROVE COMMUNITY GARDEN LICENSE AGREEMENT WITH MORGAN HILL COMMUNITY GARDEN (MHCG)

Recommendation:

Authorize the City Manager to execute and administer the license agreement establishing an initial five-year agreement and to extend the agreement in the future if desired by both the City and Morgan Hill Community Garden.

4. APPROVAL OF A CONSULTANT AGREEMENT WITH LISA WISE CONSULTING, INC. (LWC) FOR PREPARATION OF THE MONTEREY CORRIDOR FORM-BASED CODE

Recommendation:

1. Adopt resolution amending the City's Fiscal Year 2019-20 budget to recognize \$160,000 as Senate Bill 2 – Building Homes and Jobs Act planning grant revenue and appropriate \$170,720 as expenditure in the Long-Range Planning Fund (207) for preparation of the Monterey Corridor Form-Based Code; and
2. Approve and authorize the City Manager to execute and administer a Consultant Agreement with Lisa Wise Consulting, Inc. (LWC) for a not to exceed amount of \$170,720.

5. APPROVAL OF A CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE ANNEXATION ENVIRONMENTAL IMPACT REPORT (ANNEXATION EIR)

Recommendation:

Approve and authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. for preparation of the Annexation Environmental Impact Report.

6. APPROVE BUTTERFIELD VILLAGE - SUTTER BOULEVARD EXTENSION IMPROVEMENT AGREEMENT

Recommendation:

Approve and authorize the City Manager to executive and administer the Butterfield Village – Sutter Boulevard Extension Improvement Agreement with JTJ Morgan Hill RE LLC.

7. PURCHASE OF TWELVE CITY TRUCKS

Recommendation:

1. Approve the purchase of twelve (12) City trucks in the amount of \$587,634;
2. Authorize City Manager to approve purchase order in the amount of \$587,634 with National Auto Fleet Group;
3. Declare vehicles W06165, W10167, W07129, S07158, E08153, E08156, R08102, R11120, R08118, R07150, D08121, and D08100 to be surplus; and
4. Authorize the disposal of the surplus vehicles in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

8. AWARD MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE I PROJECT

Recommendation:

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to recognize \$338,260 as grant revenue and appropriate an additional \$376,959 in the Park Impact Fund (301), for the Madrone Channel Trail Improvements Project;
2. Approve the Madrone Channel Trail Improvements Phase I Project Plans and Specifications;
3. Award contract to Terramark General Engineering Contractors, Inc. for the Madrone Channel Trail Improvements Phase I Project in the amount of \$254,400;
4. Authorize expenditure of construction contingency funds not to exceed \$25,440; and
5. Authorize the City Manager to execute and administer the construction contract with Terramark General Engineering Contractors, Inc.

9. ADOPT ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Recommendation:

Waive the reading, adopt Ordinance No. 2316, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

10. APPROVE THE FEBRUARY 5, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

11. APPROVE THE FEBRUARY 19, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

12. RECEIVE REPORT FROM VALLEY WATER ON ANDERSON DAM AND CONSIDER CITY POSITION ON AB 3005 EXPEDITED DAM SAFETY FOR SILICON VALLEY ACT

Recommendation:

1. Receive verbal report from Valley Water on Anderson Dam;
2. Consider supporting AB 3005 (R. Rivas) Expedited Dam Safety for Silicon Valley Act; and
3. Direct staff to submit letter in support of AB 3005 to the appropriate representatives.

Estimated Time: 60 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 and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- 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

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Engagement and Messaging
- Economic Development
- Transportation

