



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 18, 2020 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

OPEN AND PUBLIC MEETINGS DURING THE COVID-19 VIRUS EMERGENCY

The Brown Act, Government Code Section 54953, contains special requirements that apply when members of a legislative body participate in a public meeting by telephone. Certain of these requirements have been suspended by Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020 to mitigate the spread of the coronavirus known as COVID-19.

In particular, the Executive Order suspends the provisions of the Brown Act that require noticing and posting of agendas at each location where a member will be participating telephonically, as well as provisions that require physical presence of members for purposes of a quorum or to hold a meeting. Remote participants do not need to allow public access or comment at remote locations. The Order requires that the agency notice at least one publicly accessible location where members of the public have the right to observe and offer comment at the meeting, consistent with other provisions of the Brown Act.

The following members of the Morgan Hill City Council are listed to permit them to appear telephonically, if necessary, at the City Council Meeting on March 18, 2020: Mayor Constantine; Mayor Pro Tem Martinez Beltran and Council Members Carr, McKay, and Spring.

Public Participation:

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed in the following ways:

Members of the public may physically attend, observe, and provide public comment at the meeting at the Morgan Hill City Council Chamber. However, no one who is sick or showing symptoms of COVID-19 infection will be allowed to attend the meeting. Individuals who are at higher risk from infection should also avoid gatherings, including public meetings.

Attendees are expected to comply with directions from City staff with regard to seating arrangements and other social distancing measures pursuant to Santa Clara Public Health Officers Coronavirus Directives <<https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Documents/03-13-20-Health->

Officer-Order.pdf>.

The City Council meeting will be live-streamed on Channel 17 and on the City's website at: <http://morganhillca.igmp2.com/Citizens/VideoScreen.aspx?EncoderID=1002&MediaType=Channel> and via Facebook live: <https://www.facebook.com/morganhillengage/>

Public comment will be accepted via the chat feature through Facebook live and/or by email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>> during the meeting, prior to the close of public comment on an item, and read into the record during public comment.

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

PROCLAMATIONS

Proclaiming the month of March as American Red Cross Month

Proclaiming the month of March as Women's History Month

Proclaiming March 31, 2020 as Cesar Chavez Day

PRESENTATIONS

YAC PRESENTATION DEVELOPMENTAL ASSET #3- OTHER ADULT RELATIONSHIPS

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes.

Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE MONTEREY - CITY VENTURES: AFFORDABLE HOUSING PARKING CONCESSION

Recommendation:

Adopt resolution approving the request for the affordable housing parking concession.

2. APPROVE AGREEMENT WITH ASSET PROTECTION PRIVATE SECURITY, INC. FOR SECURITY SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer a two-year agreement with Asset Protection Private Security, Inc in the amount of \$82,000 for security services.

3. APPROVE MEMORANDUM OF UNDERSTANDING FOR 2019 EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG) WITH THE COUNTY OF SANTA CLARA

Recommendation:

1. Approve and authorize the City Manager to execute and administer a Memorandum of Understanding with The County of Santa Clara for the 2019 Emergency Management Performance Grant; and
2. Adopt resolution amending the City's Fiscal Year 2019-20 adopted budget to recognize the grant revenue of \$14,400 and appropriate the same as expenditure within the General Fund (010).

4. APPROVE SECOND AMENDMENT TO AGREEMENT WITH SECURE SOLUTIONS INC.

Recommendation:

Approve and authorize the City Manager to execute and administer the Second Amendment to the Agreement with Secure Solutions Inc. for a not to exceed amount of \$85,000 to conduct hiring background investigations of police personnel.

5. APPROVE CITY SPONSORSHIP OF PHILANTHROPY NIGHT, INDIA INDEPENDENCE DAY FESTIVAL, AND FUTURE WOMEN LEADERS CONFERENCE EVENTS AT THE COMMUNITY AND CULTURAL CENTER

Recommendation:

1. Authorize the City Manager to waive facility rental fees of \$3,000 for Morgan Hill Community Foundation's November 2020 Philanthropy Night Celebration;
2. Authorize the City Manager to waive facility rental fees of \$615 for Indian Association of South Santa Clara County's August 2020 India Independence Day Festival and flag raising ceremony; and
3. Authorize the City Manager to waive facility rental fees of \$3,000 for American Association of University Women's April 2021 Future Women Leaders Conference.

6. AWARD MORGAN HILL INCLUSIVE PLAYGROUND/MAGICAL BRIDGE PROJECT

Recommendation:

1. Adopt resolution to appropriate an additional \$701,079 in the Park Impact Fund (301) for the Morgan Hill Inclusive Playground/Magical Bridge Project;
2. Approve the Morgan Hill Inclusive Playground/Magical Bridge Project Plans and Specifications;
3. Award contract to CRW Industries, Inc. for the Morgan Hill Inclusive Playground/Magical Bridge Project in the amount of \$5,562,090;
4. Authorize expenditure of construction contingency funds not to exceed \$556,209; and
5. Authorize the City Manager to execute and administer the construction contract with CRW Industries, Inc.

7. 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.

8. APPROVE THE MARCH 4, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. APPROVE 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.

Estimated Time: 15 Minutes

10. DISCUSS RESPONSE TO THE COUNTY OF SANTA CLARA'S ORDERS REGARDING COVID-19

Recommendation:

Provide direction to staff.

Estimated Time: 30 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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Manager

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Attorney

RECONVENE

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





March

Developmental Asset #3

Other Adult Relationships

Young person receives support from three or more non-parent adults.

How do non-parent adults directly affect youth?



- o Other adults will encourage youth to stand up for themselves and their interests.
- o Other adults support youth through familial struggles.
- o Other adults will guide youth in ways that parents cannot.
- o Youth can recognize their own leadership style through observing other adults.



March

Complementary Asset #10

Safety

Young person feels safe at home,
school, and in the neighborhood

The Importance of Trusted Adults to a Community's Youth

- o Youth understand that they have a support system.
- o Youth will have role models to look up to.
- o Youth feel as though they are not alone.
- o Adults can impress upon youth their beneficial characteristics.
- o Youth will have a different perspective on life experiences.
- o Youth will be able to get advice from people other than their parents.



How this relates to our community:

Programs with adult leaders:

- o Future Women's Leaders Conference
- o Chill Out
- o Boy and Girl Scouts
- o YAC & YLMH
- o Lana's Dance Studio



Individuals within our community:

- o Teachers
- o Coaches
- o Teen Center Staff
- o Recreation Leaders
- o YAC Advisor
- o Club/Troop Leaders



What differences have you noticed between being a role model and those being mentored?

How have mentors impacted you, and do you still have a mentor?





CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Tiffany Brown, Associate Planner
APPROVED BY: City Manager

APPROVE MONTEREY - CITY VENTURES: AFFORDABLE HOUSING PARKING CONCESSION

RECOMMENDATION(S)

Adopt resolution approving the request for the affordable housing parking concession.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2020-2021 Strategic Priorities

Affordable Housing and Homelessness

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Under State law, projects that include certain levels of affordable housing are entitled to receive concessions based on the number of affordable units and level of affordability provided within the project. The Monterey City Ventures project includes approximately 2,423-square feet of commercial retail with four live-work units and 97 multi-family homes located on the east side of Monterey Road and Old Monterey Road intersection. As proposed the project includes fifteen percent (15%) affordable units for persons and families of moderate income and is consistent with the General Plan and the Block Level Master Plan Block 4 Planned Development.

Government Code Section 65915(b)(1)(A) requires the City to grant one incentive or concession for projects that include at least ten percent (10%) affordable units, unless specific written findings described below are made by the City. Concessions must be approved, even if the project is not requesting an increase in density. Concessions may include a reduction in setbacks, an increase in height, a parking reduction, etc. This project is requesting a parking concession.

The Morgan Hill Municipal Code requires the project to have a total of 10 parking stalls for the commercial and 282 parking stalls for the residential and live work units. Because the project qualifies for a parking concession, Government Code Section 65915, Subsection (p) provides maximum parking ratios that prohibit City from requiring more than 223 parking stalls for the non-commercial portion of this project as summarized in the table below.

For the non-commercial portion of the project, the applicant is requesting a concession from the Municipal Code requirement to reduce total parking by 38 stalls and will

provide a total of 244 non-commercial parking spaces. This includes two covered parking stalls per household, ten stalls for the commercial space, and 21 guest spaces. See summary table below:

Use	Square footage / Number of units	Muni-code Ratio	Gov. code Ratio	Muni-code requirement	Gov. Code Requirement	Proposed
Commercial	2423sq.ft.	1/250sq.ft.	-	10	-	10
2 bedrooms	10	2/unit	2/unit	20	20	20
3 bedrooms	50	2.5/unit	2/unit	125	100	100
3 bed with 4 th bed option	41	2.5/unit	2.5/unit	103	103	103
Guest Parking	101	1/3 units	None	34	None	21
Total				292	223	254

Under Government Code 65915(d)(1) the city shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

Staff is unable to make any of these findings for this project.

Next steps for the project include a public hearing at Planning Commission on March 24, 2020 to review and approve or deny the Design Review permit, Tentative Map and Environmental document prepared consistent with the California Environmental Quality Act (CEQA).

COMMUNITY ENGAGEMENT: Inform

As part of the Block Level Master Plan for Block 4, the project was publicly noticed (mailing to property owners within 300-feet of the project and newspaper legal noticing) for the minimum 10-day period.

The draft environmental document was publicly noticed within the newspaper, posted at the Santa Clara County Clerk's Office, and sent to the State Clearing House for a circulation period of 30-days. The project was publicly noticed by mail to property owners within 600-feet of the project, by newspaper, and the site posted for the Planning Commission Meeting for the Design Review Permit and the Tentative Map request.

ALTERNATIVE ACTIONS:

Council may find the project to not be consistent with the Government Code Section 65915(d)(1).

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

With the adoption of the General Plan in July of 2016, the project site was re-designated as Mixed-Use Flex (MUF) with a Block Level Master Plan requirement.

On February 20, 2019, the City adopted Ordinance No 2298, establishing a Planned Development (PD) Combining District to establish a Block-Level Master Plan (BLMP) for Monterey Road Corridor Block Four, which includes the subject site.

FISCAL AND RESOURCE IMPACT:

Review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

On April 4, 2018, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearing house No. 2015022074) was prepared for the City of Morgan Hill Zoning Code Update project pursuant to the provision of the State of California Environmental Quality Act Guidelines Section 15164.

The City determined pursuant to CEQA Guidelines Section 15183, that the Block Four - Block Level Master Plan provided additional guidance and standards and therefore did not require additional environmental review in that the new zoning did not result in any new impacts that were not already identified in the Morgan Hill 2035 EIR and subsequent Addendum. The request for a parking concession further identifies additional guidance for the future Monterey City Ventures project within Block Four of the Block Level Master Plan. A project level environmental review for the Monterey City Ventures project has been prepared. The Planning Commission will be considering the project specific Mitigated Negative Declaration on March 24, 2020.

LINKS/ATTACHMENTS:

1. Resolution - Affordable Housing Parking Concession

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PARKING CONCESSION FOR THE MONTEREY – CITY VENTURES MIXED USE PROJECT CONTAINING FIFTEEN PERCENT AFFORDABLE UNITS LOCATED ON THE EAST SIDE OF MONTEREY ROAD AND OLD MONTEREY ROAD INTERSECTION AT 18110 MONTEREY ROAD (APN: 726-25-006).

WHEREAS, the parking concession for a mixed-use project containing affordable units is consistent with the General Plan and Block Four Block Level Master Plan as provided by Government Code Section 65860.

WHEREAS, the City Ventures project as proposed complies with the allowed density and development standards for height, setbacks, and allowed uses.

WHEREAS, the Project is consistent with Government Code Section 65915(d)(2)(A) in that the common interest development project includes at least 10 percent of the total units for affordable housing units for persons and families of moderate income and therefore is allowed one concession.

WHEREAS, the findings required by Government Code Section 65915(d)(1) in that the project is supplying the minimum required parking listed within the Government Code and is consistent with the following findings:

(A) The concession or incentive results in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive will not have specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would not be contrary to state or federal law.

WHEREAS, the proposed project will provide a public benefit of a minimum of ten percent of affordable units, for persons and families of moderate income, incorporated within the Monterey – City Ventures project located at 18110 Monterey Road and identified by Assessor's Parcel No. 726-25-006 or this concession for a parking reduction will become null and void.

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

Section 1. The City Council does hereby find that the foregoing recitals are true and correct.

Section 2. The project is consistent with the Zoning Ordinance and General Plan.

Section 3. The project is eligible for the proposed concession per the Municipal Code Section 18.48.030 and 18.48.050 within the Municipal Code and will provide the minimum parking required by Government Code Section 65915(d)(1).

Section 4. The City Council of the City of Morgan Hill hereby approves the parking concession for the City Venture project.

Section 5. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th 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 a regular meeting held on March 18, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Mariah Dabel, Community Services Supervisor

APPROVED BY: City Manager

APPROVE AGREEMENT WITH ASSET PROTECTION PRIVATE SECURITY, INC. FOR SECURITY SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a two-year agreement with Asset Protection Private Security, Inc in the amount of \$82,000 for security services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Financial Sustainability

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

The Community and Cultural Center's banquet rooms are rented by private parties for special events. To ensure safety and protect the facility, the City requires that security personnel are present at all events with dancing and alcohol. The City contracts with a security firm to provide this service and passes this cost on to the rental customers. The agreement also allows for security services to be requested for additional one-time or ongoing events at other locations in the City as needed.

A Request for Proposal (RFP) was issued in November 2019 to identify a company to provide security services at the Community and Cultural Center. The RFP was advertised in the Morgan Hill Times and posted to the City's website. In addition, staff distributed the RFP announcement via email to area security services firms. The City received four proposals. Representatives from the Community Services Department and Police Department interviewed each of the four companies, listed below.

1.	Asset Protection Private Security, Inc.
2.	Atlas Private Security
3.	Coleman Security & Investigations Inc.
4.	First Alarm Security & Patrol, Inc.

Staff evaluated each firm's comparable experience, pricing, and proposed plan to perform the work as scoped. Based on this assessment, staff recommends the award of a two-year consultant agreement to Asset Protection Private Security, Inc. The agreement authorizes the City Manager to extend the term for a maximum period of one year, along with a maximum compensation increase subject to City Council appropriation and City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.

COMMUNITY ENGAGEMENT: Not Applicable

Security services are a necessary component of operating the Community and Cultural Center and no direct community engagement on this topic was believed necessary. The RFP was advertised in the Morgan Hill Times and posted on the City website, which provides an opportunity for local vendors to subscribe to and receive notifications for City bids, proposals, and quotes.

ALTERNATIVE ACTIONS:

City Council could decide to not approve the agreement and direct staff to identify an alternate model for providing security services. This would likely increase cost and have a negative impact on customer satisfaction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In July 2016, the City entered into a two-year agreement with Asset Protection Private Security, Inc. On September 27, 2017, the City Council approved the first amendment to the agreement to increase the not-to-exceed total compensation which was necessary due to additional rental activity at the Community and Cultural Center and other City security needs. On May 16, 2018, City Council approved the second amendment to extend the term for an additional year and increase the total compensation. On April 17, 2019, City Council approved the third and final amendment to a revised not-to-exceed total compensation of \$145,000 and extended the term for a fourth year.

FISCAL AND RESOURCE IMPACT:

The agreement is subject to budget appropriation by City Council. Funding of \$82,000 for this agreement will be included in the upcoming Fiscal Year 2020-21 and 2021-22 recommended biennial budget, in the General Fund (010), within the Community Services Department (010.2150.42231). The expenditures are fully offset by revenue.

CEQA (California Environmental Quality Act):

Categorical Exemption

The planned maintenance and management of City facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Asset Protection Agreement 070120

CONSULTANT AGREEMENT

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

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2022 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be security services as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$82,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed \$82,000 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:

Larry A. Johnson
1430 Blossom Hill Road
San Jose, CA 95118

Address of CITY is as follows:

Chris Ghione	with a copy to:
Community Services Dept	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. **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:

ASSET PROTECTION PRIVATE SECURITY,
 INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

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

Date: _____

Date: 2-21-2020

By: _____

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

Date: 2-21-2020

EXHIBIT A SCOPE OF SERVICES

Provide security services for the City at selected special events and banquets occurring at the Community and Cultural Center or other locations designated by the City.

Responsibilities include:

1. Supply the requested number of security officers for special events to provide customer service and a visible presence at the event.
2. Security officer(s) will arrive at the designated time and check in with the City Building Coordinator or designated City staff to be briefed on the nature of the event and any special instructions.
3. Work in coordination with on-site City Building Coordinator or designated City staff to maintain general order and ensure City policies and procedures are enforced.
4. Ensure that room capacities for events are not exceeded.
5. Ensure event personnel at bar area are over the age of 21, not under the influence, and are following the California legal drinking age.
6. Ensure only guests over the California legal drinking age are consuming alcohol.
7. Periodically patrol the parking lot and grounds during events.
8. Contact the Police Department or emergency services in the event of a disturbance, breach of the peace, or other emergency.
9. Ensure that the Community and Cultural Center or other City facilities are secure and locked after special events have ended.
10. Ensure all guests and visitors have exited the facility and walk the City employee to his or her car after the event, as needed.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

The security company shall calculate charges based on the hourly rates outlined below.

Weekdays (Monday-Thursday)	\$25.00 per hour
Weekends (Friday, Saturday, Sunday)	\$25.00 per hour
Holidays (All Federal Holidays)	\$30.00 per hour
After Midnight	\$30.00 per hour

The City shall pay for services on a weekly invoice submitted by the security company.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

The City's Events Coordinator or designee will notify the security company of dates and times of service based on rentals at the Community and Cultural Center.

Attachment: Asset Protection Agreement 070120 [Revision 1] (2669 : Agreement with Asset Protection for Security Services)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Jennifer Ponce, OES Coordinator
APPROVED BY: City Manager

APPROVE MEMORANDUM OF UNDERSTANDING FOR 2019 EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG) WITH THE COUNTY OF SANTA CLARA

RECOMMENDATION(S)

1. Approve and authorize the City Manager to execute and administer a Memorandum of Understanding with The County of Santa Clara for the 2019 Emergency Management Performance Grant; and
2. Adopt resolution amending the City's Fiscal Year 2019-20 adopted budget to recognize the grant revenue of \$14,400 and appropriate the same as expenditure within the General Fund (010).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Financial Sustainability

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The County Civil Protection and Emergency Services Ordinance establishes the Operation Area Council (OAC) and endows the OAC with governing body authority to enhance planning and preparedness for large-scale emergencies in the Santa Clara Operational Area, including by making funding allocation decisions for Emergency Management Performance Grant (EMPG) funding awarded by the United States Department of Homeland Security to the California Office of Emergency Services ("Cal OES"), and subsequently sub-awarded to the County.

Cal OES is expected to award the County 2019 EMPG funding in the amount of \$519,832 for the purpose of sustaining and improving comprehensive emergency management programs.

Per the Memorandum of Understanding (MOU) with the County (Attachment 2), Morgan Hill will receive up to \$14,400 in grant funds for equipment to enhance the EOC capabilities including laptops and a video switch system used to display emergency information throughout the Police Department. The laptops will be for use by the City's Emergency Operations Center (EOC) team during training exercises and activations.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the City's grant award and expenditures and activities associated with the grant funds.

ALTERNATIVE ACTIONS:

One alternative action by the Council could be to decline the funds for the EOC equipment. Without approval, Morgan Hill OES would forgo the purchase of laptops and installation of the video switch as these funds were not appropriated in the FY 2019-20 budget.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 4, 2017, the City Council approved the MOU with County of Santa Clara for the 2017 EMPG grant cycle.

On March 6, 2019, the City Council approved the MOU with County of Santa Clara for the 2018 EMPG grant cycle.

FISCAL AND RESOURCE IMPACT:

The 2019 EMPG funding provides \$14,400 for the purchase and installation of video switch equipment to enhance EOC operations. Grant award revenues will be deposited into Homeland Security Grant revenue account (010.37561). Associated expenses will be from the Morgan Hill OES FY 2019-20 operating budget. The budget amendment resolution and scorecard are attached (Attachment 1).

CEQA (California Environmental Quality Act):

Not a Project

This grant entails organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. EMPG 2019 Resolution
2. EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN GRANT AGREEMENT WITH COUNTY OF SANTA CLARA FOR THE 2019 EMERGENCY MANAGEMENT PERFORMANCE GRANT AND APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 BUDGET IN THE GENERAL FUND (FUND NO. 010) TO APPROPRIATE \$14,400 AS GRANT REVENUE AND EXPENDITURE FOR THE PURCHASE OF EQUIPEMENT 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 "Approve Memorandum of Understanding for Emergency Management Performance Grant with County of Santa Clara" submitted for City Council consideration at its meeting of March 18, 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 Memorandum of Understanding Agreement with County of Santa Clara for the Emergency Management Performance Grant substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “Agreement”) is hereby approved; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit B; provided, specifically, that the total amounts to be received in grant funds by City under the Agreement shall in no event exceed Fourteen Thousand Four Hundred Dollars (\$14,400); and
- c. 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
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City’s Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of the City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th 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 a regular meeting held on March 18, 2020.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: EMPG 2019 Resolution [Revision 4] (2678 : MOU For 2019 EMPG)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

020

FUND:

DEPARTMENT:

OBJECT:

010	General Fund
3230	Police-Emergency Services
42245	COMPUTER HARDWARE-NON CAPITAL

AGENDA DATE:

AGENDA ITEM TITLE:

03/18/20
EMPG MOU

	07/01/19			06/30/20 PROJECTED
	BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	ENDING FUND BALANCE
ORIGINAL BUDGET	17,924,089	43,120,858	43,589,859	17,455,088
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	35,000	110,000	(75,000)
RECOMMENDED ACTION		14,400	14,400	-
RESULT OF RECOMMENDED ACTION	<u>17,924,089</u>	<u>43,170,258</u>	<u>43,714,259</u>	<u>17,380,088</u>

EXHIBIT B

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF MORGAN HILL GRANTING PROGRAM FUNDS FOR THE
2019 EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG)**

THIS AGREEMENT is made effective July 1, 2019, by and between the County of Santa Clara (“County”) and the City of Morgan Hill (“City”) for the allocation and distribution of 2019 Emergency Management Performance Grant (“EMPG”) funds.

RECITALS

WHEREAS, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San José, Santa Clara, Saratoga, Sunnyvale, the Towns of Los Gatos and Los Altos Hills, and the County of Santa Clara, are parties to the 1994 Operational Area Interim Agreement; and

WHEREAS, the Santa Clara County Emergency Operational Area Council (“EOAC”) is the advisory body of the Santa Clara Operational Area in matters affecting disaster preparedness throughout the Operational Area. EOAC membership includes 5 city council members representing cities in the Operational Area as well as representatives of the Santa Clara Valley Water District, Office of the County Executive, County Board of Supervisors, City Managers’ Association, Police Chiefs’ Association, Fire Chiefs’ Association, County Public Health Department, County Social Services Agency, County Emergency Medical Services Agency, Santa Clara Valley Transportation Authority, and emergency management representatives; and

WHEREAS, the County Civil Protection and Emergency Management Ordinance establishes the EOAC and endows the EOAC with authority to enhance planning and preparedness for large-scale emergencies in the Santa Clara Operational Area, including by making funding allocation recommendations for EMPG funding awarded by the United States Department of Homeland Security to the California Governor’s Office of Emergency Services (“Cal OES”), and subsequently sub-awarded to County; and

WHEREAS, Cal OES has awarded County 2019 EMPG funding in the amount of \$519,832 for the purpose of sustaining and improving comprehensive emergency management programs;

NOW, THEREFORE, this AGREEMENT is to allocate the sum of **\$14,400** from County to City, so that City may implement the “EOC Computers & Technology” project as provided under this Agreement and specified in the EMPG Grant Certifications and Assurances, Exhibit B. The performance period for County for this grant expires on June 30, 2021. The performance period for City for the subgrant expires on March 31, 2021.

County and City agree as follows:

THE AGREEMENT

Article I. Definitions

1. Specific Terms

- (a) **“Burdened Labor Rate”** shall mean the labor rate including benefits, taxes and other deductions from an employee’s paycheck. This rate does not include vacation benefits. The hourly burdened labor rate is used to calculate City’s match obligation.

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)

- (b) **“City”** shall mean the City of Morgan Hill, its officers, board members, employees, and agents.
- (c) **“County”** shall mean the County of Santa Clara, its officers, board members, employees, and agents.
- (d) **“EMPG funds”** or **“EMPG funding”** shall mean the funding City receives under this Agreement.
- (e) **“Federal Program Guidance”** shall mean guidance documents issued by the Federal Emergency Management Agency, including the EMPG Program Funding Opportunity Announcement, for Fiscal Year 2019.
- (f) **“Grant Certifications and Assurances”** shall mean the FY19 “Standard Assurance For All Cal OES Federal Grant Programs”, “Certification Regarding Lobbying”, and “Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure”
- (g) **“Highly Compensated Individual”** shall mean an individual whose income is \$300,000 or more per year.
- (h) **“Prime Recipient”** shall refer to County.
- (i) **“Project Manager”** shall refer to the City employee identified as “Requestor” on an EMPG Project Proposal form.
- (j) **“Spend Plan”** shall mean a written document that explains the project on which City intends to spend 2019 EMPG funding, including project deliverables and milestone dates by which any funds allocated to City must be spent.
- (k) **“State Guidance”** shall mean the California Supplement to the Federal Program Funding Opportunity Announcement, issued by Cal OES for Fiscal Year 2019.
- (l) **“Subgrant”** shall mean funds awarded to the City under this Agreement.
- (m) **“Sub-Recipient”** shall refer to City.

2. References to This Agreement

Any reference to this Agreement shall include: (a) the Agreement; (b) all exhibits, appendices, schedules, and attachments to this Agreement; (c) all statutes, ordinances, regulations, rules, or other documents incorporated by reference into this Agreement; (d) all amendments, modifications, or supplements to this Agreement.

Article II. Allocation and Spend Plans

1. Allocation.

The 2019 EMPG funds shall be disbursed pursuant to the County’s FY 2019 EMPG Grant application for each City. County shall reimburse to City funds that City expends under the 2019 EMPG program for eligible expenditures. The amount for City shall not exceed **\$14,400**, unless additional funds become

available under the 2019 EMPG program following the execution of this Agreement. If additional funds are allocated, an amendment to this Agreement shall follow.

City acknowledges and agrees that County shall have no obligation to disburse EMPG funds to City until County and City have fully and finally executed this Agreement.

City acknowledges and agrees that County shall have no obligation to disburse EMPG funds to City unless and until the State of California has approved \$519,832 in FY 2019 EMPG funding.

2. Spend Plans

Upon execution of this agreement, City shall provide County with Spend Plans for review by County's Office of Emergency Management ("OEM") Director or designee. All Spend Plans must be approved by County's OEM Director or designee based on projects County has submitted to the State for the 2019 EMPG program. If County's OEM Director does not approve City's Spend Plan, County OEM shall notify City, and City shall have 10 days from the date of the notice to submit a revised Spend Plan to County OEM for approval or risk reallocation of funds. City's Spend Plans are a required part of this MOU.

Article III. Requests for Reimbursement and Reimbursements

1. Required Documentation for Reimbursement

The EMPG is a reimbursement grant under which Cal OES disburses reimbursement funds to County, and County disburses reimbursement funds to City. No cash advances are permitted under the EMPG program.

The EMPG is a matching funds grant that requires City to provide a dollar-for-dollar match for any EMPG funds it receives. All invoices/ requests for reimbursement from City must include appropriate documentation such as receipts or payment records as well as other documentation required under Federal or State grant program requirements (see Article III).

(a) Requests for Equipment

City is solely responsible for procuring any equipment under this Agreement in accordance with Federal requirements for procuring grant funded equipment; and, if more restrictive, applicable City procurement policies and requirements.

Prior to purchasing any equipment under this Agreement, when required, City must submit an Environmental and Historic Preservation (EHP) Screening form and receive written approval from FEMA.

The following documentation must be provided along with any reimbursement requests for equipment:

- Quote or solicitation documents
- Summary of pricing and chosen vendor
- Documentation that vendor is not on the excluded parties list (<https://sam.gov/>) a print-out of the search result page will suffice)
- Purchase order and/or contract

- Receiving documentation/packing slip
- Invoice
- Proof of payment

All equipment must be indicated in the Spend Plan City submits to County, and must be authorized per the web-based Authorized Equipment List published by FEMA and available via: <https://www.fema.gov/authorized-equipment-list>.

(b) Subcontracts

Subcontracts totaling \$25,000 or more require preapproval from the County. If City is allowed to award subcontracts totaling \$25,000 or more, it must report on any such subcontracts and on Highly Compensated Individuals on the Financial Disclosure Form, Exhibit E, within 30 days of the award. The following information must be included in City's report on any sub-award exceeding \$25,000:

- Name of entity receiving award;
- Amount of award;
- Funding agency;
- Catalog of Federal Domestic Assistance program number;
- Award title (descriptive of the purpose of the funding action);
- Location of the receiving entity and primary location of performance including city, state, and federal Congressional district;
- Dun & Bradstreet (D&B) DUNS Number of the receiving entity, and of its parent if applicable; and
- Total compensation and names of receiving entity's five most highly compensated executives if:
 - In the preceding fiscal year, the subcontractor received 80 percent or more, and \$25,000,000 or more, of its gross annual revenue from federal procurement contracts or subcontracts or from federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.230; and
 - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), 78o(d), or under section 6104 of the Internal Revenue Code of 1986.
 - City must report subcontractor executive compensation by the end of the month following the month in which it makes the subaward. For example, if the subaward is obligated in any date in April 2019, City must report any required compensation information by May 31, 2019.

Classified information that, in the interest of national security, requires protection against unauthorized disclosure (i.e., information deemed Top Secret, Secret, or Confidential under Executive Order 12958) is exempt from the Prime and Sub-Recipient reporting requirements, as are contracts with individuals.

(c) Sole Source Contracts

Sole source contracts of \$250,000 or more are not allowable under the EMPG program unless first approved by Cal OES. City must obtain sole source request documentation and submit it to

the Grants Manager of County's OEM. Upon City's completion and submission of the required sole source documentation, County's Grants Manager shall forward all sole source documents to the appropriate Cal OES contact for review and approval. Only after Cal OES approval is given can a sole source procurement be completed and expenditures reimbursed using EMPG allocated funds. All sole source procurements must follow Federal procurement requirements for grants and, if more restrictive, the City's own procurement policies.

(d) Grant Funded Personnel

EMPG grant-funded personnel are any personnel paid at any percentage with EMPG funding. This includes M&A staff funded by EMPG Program funds. All EMPG Program funded personnel shall complete the training requirements in Article IV, Section 2 (c) by December 31, 2019.

Recorded proof of completion, such as all certificates of completion, must be submitted by the City to County (OEM) before any reimbursements to the City will be made. In any case, proof of completion must be provided by December 31, 2019.

Documentation of participation in exercises is also required by the grant and progress towards meeting this requirement must be reported to the grant manager at least quarterly.

Time reporting requirements: To receive payments for personnel costs, City must submit time and payroll documentation that meets Federal Grant, State Grant (Cal OES) and County reporting requirements.

(e) Other Requests

The following documentation is required for all reimbursement requests for contractors:

- Quote or solicitation documents
- Executive summary of how contractor was chosen
- Documentation that vendor is not on the excluded parties list (<https://www.sam.gov/>) (a print-out of the search result page will suffice)
- Purchase order and/or contract
- Invoice showing deliverables and milestones completed
- Proof of payment
- Financial Disclosure Form (Exhibit E) if awarded contract exceeds \$25,000

2. Submission of Requests for Reimbursement

(a) City shall submit reimbursement requests to County's OEM (see Article V.1 below) on a quarterly basis, as detailed in the chart below. Unless pre-approved by County's OEM Director or designee, all reimbursement requests shall be due fifteen calendar days after the end of the quarter, with the exception of the final expenditure and/or invoice, as indicated below. Any expenditure during the final period identified in the chart below shall be made by March 15, 2021, and any related invoice shall be submitted by March 31, 2021, unless otherwise pre-approved by County's OEM Director or designee, in order to meet 2019 EMPG deadlines. Reimbursement requests shall be due for expenditures during specified periods as follows:

For Expenditures During the Period:	Due Dates for Reimbursement Requests:
July 1, 2019 through December 31, 2019	January 15, 2020
January 1, 2020 through March 31, 2020	April 15, 2020
April 1, 2020 through June 30, 2020	July 15, 2020
July 1, 2020 through September 30, 2020	October 15, 2020
October 1, 2020 through December 31, 2020	January 15, 2021
January 1, 2021 through March 15, 2021	March 31, 2021

- (b) During the term of this Agreement, County is not obligated to honor any request for reimbursement that is submitted after the due dates for reimbursement requests for expenditures within a given quarter as specified above in Article II, Section 2(a).
- (c) All grant funds not claimed by City via a proper reimbursement request, which includes all required documentation, by March 31, 2021 will be forfeited. County may then determine how to spend those funds in accordance with grant requirements.

Article IV. Use of Funds

1. Master Grant Obligations

- (a) City shall comply with the EMPG Federal Program Guidance, the State Guidance, and the Grant Certifications and Assurances, attached as Exhibit B. City shall require any subgrantee, contractor, or other entity receiving EMPG funds through or from City to execute a copy of the Grant Certifications and Assurances, and shall be responsible for ensuring that subgrantee, contractor, or other entity complies with the Grant Certifications and Assurances.
- (b) City shall ensure its Project Manager attends a grant kickoff meeting with County OEM staff. Additionally, City shall ensure its Project Manager is available to meet with County OEM staff upon request during the period of this agreement to report on progress on each project funded under this Agreement.
- (c) City shall comply with all other applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved Spend Plans; and any other conditions imposed by Cal OES or by this Agreement, provided that if any provisions of this Agreement conflict with any State requirements, the State requirements will control. City shall ensure that any subgrantee, contractor, or other entity receiving EMPG funds through or from City complies with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved Spend Plans; and any other conditions imposed by Cal OES or by this Agreement.
- (d) By executing this Agreement, City certifies that it is not debarred, suspended, or otherwise ineligible to receive EMPG funds. In addition, City shall ensure and independently verify that any subgrantee, contractor, or other entity receiving EMPG funds through or from City is not debarred, suspended, or otherwise excluded from participation in the EMPG program. City shall maintain documentary proof of this verification in its files.

2. Scope of Services

- (a) City shall use the funds granted under this Agreement only for the purpose of implementing applicable initiatives under the 2019 EMPG program, as indicated in Exhibit C, Program Narrative. City shall not use the funds granted under this Agreement for any other purpose. County shall not be required to disburse funds to or otherwise pay City for services, materials, equipment, or supplies provided by City that are beyond the scope of the services, materials, equipment, or supplies agreed upon in this Agreement or a lawfully executed written amendment.

Indirect costs are allowable under the FY19 EMPG grant. Allowability of Indirect costs does not increase the total amount of the State, Operational Area or other sub-recipient (i.e. jurisdictions) grant awards. Claims for indirect costs therefore necessarily decrease the federal funds available to pay for direct project costs. Subawards are based on the direct cost of approved projects. Sub-recipients wishing to claim indirect costs must use an indirect cost rate in compliance with applicable Federal guidance and regulations including 2 C.F.R. § 200.68 and Subpart E.

- (b) All EMPG grant-funded personnel (e.g. an Emergency Preparedness Planner employed by the City under this grant) shall participate in no less than three exercises in a 12-month period. EMPG grant-funded personnel are any personnel paid at any percentage with EMPG funding. This includes contracted personnel, as well as M&A staff funded by EMPG grant funds. There is no specific requirement for level of “participation” in the exercises – i.e., observation and attendance satisfies the objective. The exercises can be of any type (e.g., Drills, Tabletop Exercises, or Functional) within the performance period (see <https://hseep.dhs.gov>). Participation in exercises by grant funded staff must be reported quarterly to ensure adequate progress is being made toward meeting this requirement.
- (c) To ensure the development of a professional emergency management workforce, all EMPG grant-funded personnel shall complete the following 11 training requirements and shall record proof of completion:
- National Incident Management System (NIMS) Training:
 - i. IS 100 Introduction to Incident Command System
 - ii. IS 200 ICS for Single Resources and Initial Action Incident
 - iii. IS 700 National Incident Management System, An Introduction
 - iv. IS 800 National Response Framework, An Introduction
 - FEMA Professional Development Series:
 - v. IS 120.c Introduction to Exercises
 - vi. IS 230.d Fundamentals of Emergency Management
 - vii. IS 235.c Emergency Planning
 - viii. IS 240.b Leadership and Influence
 - ix. IS 241.b Decision Making and Problem Solving
 - x. IS 242.b Effective Communication
 - xi. IS 244.b Developing and Managing Volunteers

The aforementioned courses are all available for free on-line at the following links:
<http://training.fema.gov/IS/NIMS.aspx> & <http://training.fema.gov/emiweb/PDS/>

Note: The “G” course series and classroom-based equivalents can be used as an alternate to satisfy these training requirements. Past completion of the above courses (or qualifying equivalent) may be considered acceptable in meeting this requirement.

Article V. Term and Termination

1. Term of Agreement

This Agreement is effective from July 1, 2019 through June 30, 2021—the FY 2019 EMPG performance period established by the State for the County.

2. Availability of Funds

- (a) The parties acknowledge and agree that this Agreement is dependent upon the availability of County, regional, State and/or federal funding.
- (b) Budgetary Contingency: This Agreement is contingent upon the appropriation of sufficient funding by County for the products and services covered by this Agreement. If funding is reduced or eliminated by County for the products or services covered by this Agreement, County has the option to either terminate this Agreement with no liability occurring to County or to offer an amendment to this Agreement indicating the reduced amount.
- (c) The obligations of County to make payments in accordance with the provisions of this Agreement may be delayed, reduced or terminated as a result of any delay, reduction, or change in allocation or allotment in funding to County from federal, State or other regional funding sources.

3. Termination

- (a) Termination for Convenience. County shall have the option, in its sole discretion, to terminate this Agreement at any time without cause upon written notice to City. The written notice shall specify the date on which termination shall become effective, which shall be no less than seven (7) days from the date of the notice.
- (b) Termination for Cause. Either party may terminate this Agreement for cause upon written notice to the other party. The written notice shall specify the date on which termination shall become effective, which shall be no less than thirty (30) days from the date of the notice. Termination for cause includes, but is not limited to, a material breach of this Agreement, a violation of any applicable laws, or failure to comply with applicable EMPG guidelines.
- (c) Opportunity to Cure. In the event of termination for material breach of this Agreement, the non-breaching party shall give written notice of the breach to the breaching party, specifying the breach/cause. The breaching party shall not be deemed in default and the non-breaching party shall not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the breaching party’s receipt of the notice of breach, or within such longer period as may be reasonably required to cure, correct or remedy the breach, provided the breaching party has commenced its cure, correction or remedy within the thirty (30) day period and diligently and continuously pursues that cure, correction or remedy.

- (d) If this Agreement is terminated, City shall return EMPG funding in accordance with EMPG program guidelines.

Article VI. Indemnification and Liabilities

1. Indemnification by City

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the parties under Government Code section 895.6, County and City agree instead that under Government Code section 895.4, City shall fully indemnify and hold County, its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of City, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to City under this Agreement. This indemnity shall include, without limitation, reasonable attorneys' fees, consultants and experts and related costs, and County's cost of investigating any claim.

2. Duty to Defend

City acknowledges and agrees that its obligation to defend County under Article V.1: (a) is an immediate obligation, independent of its other obligations under this Agreement; and (b) applies to any claim, expense, cost, damage, or liability falling within the scope of Article V.1, regardless of whether the allegations made in connection with that claim, expense, cost, damage, or liability may be groundless, false, or fraudulent. County shall provide City with prompt notice of any claim, expense, cost, damage, or liability under Article V.1 and City shall have the right to defend, settle, or compromise that claim, expense, cost, damage, or liability, provided, however, that County shall have the right to retain its own counsel at City's expense if representation of County by counsel retained by City would result in a conflict of interest, and that City shall obtain County's prior written consent to settle or compromise if City contends that County shares in any liability. County's failure to notify City promptly of any claim, expense, cost, damage, or liability shall not relieve City of liability to County under Article V.1 unless that failure materially impairs City's ability to defend against the claim, expense, cost, damage, or liability.

3. Limitation on Liability

County, its officers, board members, employees, and agents shall not be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of City, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to City under this Agreement.

County's obligations under this Agreement shall be limited to the aggregate amount of EMPG funds actually disbursed. Notwithstanding any other provision in this Agreement or any other document or communication between County and City relating to this Agreement, in no event shall County be liable for any damages arising out of or in connection with this Agreement, the EMPG funds, City's Spend Plan, or any activities performed in connection with this Agreement.

Article VII. Miscellaneous

1. Notice

All notices required by this Agreement shall be deemed given when provided in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To City:

Jennifer Ponce, Emergency Services Coordinator
Morgan Hill Police Department
16200 Vineyard Blvd
Morgan Hill, CA 95037

To County:

Ivan Williams
EMPG Grant Manager
County of Santa Clara Office of Emergency Management
55 W. Younger Ave., Suite 450
San José, CA 95110

2. Compliance with all Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

- (a) Compliance with All Laws. City shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (b) Compliance with Non-Discrimination and Equal Opportunity Laws: City shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, City shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall City discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- (c) Compliance with Wage and Hour Laws: City shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

- (d) **Definitions:** For purposes of this Subsection, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality of Assurance.
- (e) **Prior Judgment, Decisions or Orders against City:** By signing this Agreement, City affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that City violated an applicable wage and hour law or pay equity law. City further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.
- (f) **Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract:** If at any time during the term of this Agreement, City receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then City shall promptly satisfy and comply with any such Final Judgment. City shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. City shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (g) **Access to Records Concerning Compliance with Pay Equity Laws:** In addition to and notwithstanding any other provision of this Agreement concerning access to City’s records, City shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, City shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County’s access to such records and facilities shall be permitted at any time during City’s normal business hours upon no less than 10 business days’ advance notice.
- (h) **Pay Equity Notification:** City shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to City for a job in California (collectively, “Employees and Job Applicants”) with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this

Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of City's Employees and Job Applicants.

- (i) **Material Breach:** Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
 - 1. Suspend or terminate any or all parts of this Agreement.
 - 2. Withhold payment to City until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
 - 3. Offer City an opportunity to cure the breach.
- (j) **Subcontractors:** City shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

3. County No-Smoking Policy

City and its employees, agents and subcontractors shall comply with County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where County is the sole occupant, and (3) in all County vehicles.

4. Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by City with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low-fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, City shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high-calorie desserts; (3) attempt to accommodate special dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the City should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, for which sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored reduced fat (either nonfat or 1% low-fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8-ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40

calories per 8-ounce serving. Sugar-sweetened beverages shall not be provided.

5. Governing Law, Venue

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

6. Assignment

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

7. Entire Agreement

This Agreement and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

8. Amendments

This Agreement may only be amended by a written instrument signed by the Parties.

9. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

10. Contract Execution

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

11. Severability

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

12. Waiver

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and

shall apply to the specific instance expressly stated.

13. Conflicts of Interest

City shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, City covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. City further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. City, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, City shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to City's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of City's service to the County under this Agreement. City shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. City shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, City shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

14. Contracting Principles

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, the City and all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives

of the City, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

15. California Public Records Act

County and City are public agencies subject to the disclosure requirements of the California Public Records Act ("CPRA"). If either County's or City's proprietary information is contained in documents or information submitted to the other party, and the submitting party claims that such information falls within one or more CPRA exemptions, the submitting party must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the receiving party will make best efforts to provide notice to the submitting party prior to such disclosure. If the submitting party contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the receiving party is required to respond to the CPRA request. If the submitting party fails to obtain such remedy within the time the receiving party is required to respond to the CPRA request, the receiving party may disclose the requested information.

16. Third Party Beneficiaries

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

17. Certified Resolution of Signature Authority

Upon request of County, City shall deliver to County a copy of the resolution(s) authorizing execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of City.

Signed:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

By _____
Garry Herceg
Deputy County Executive

Date

By _____
Christina Turner
City Manager

Date

Approved as to Form and Legality:

Approved as to Form:

Kavita Narayan
Lead Deputy County Counsel

Date

City Attorney

Date

Enclosures

- | | |
|-----------|--|
| Exhibit A | Santa Clara County EMPG Notification of Application Approval |
| Exhibit B | Grant Certifications and Assurances |
| Exhibit C | Project Narratives |
| Exhibit D | Functional Timesheet Template |

EXHIBIT A

GAVIN NEWSOM
GOVERNOR

MARK S. GHILARDUCCI
DIRECTOR



October 22, 2019

Garry Herceg
Deputy County Executive
Santa Clara County
70 West Hedding St. 11th Floor
San Jose, CA 95110

SUBJECT: **NOTIFICATION OF SUBRECIPIENT AWARD APPROVAL**

Fiscal Year (FY) 2019 Emergency Management Performance Grant (EMPG)
Subaward #2019-0003, Cal OES ID#085-00000
Subaward Period of Performance: 07/01/2019-06/30/2021

Dear Mr. Herceg:

The California Governor's Office of Emergency Services (Cal OES) approved your FY 2019 EMPG subaward in the amount of \$519,832. Once the completed application is received and approved, reimbursement of eligible subaward expenditures may be requested using the Cal OES Financial Management Forms Workbook (FMFW). Failure to provide documentation in a timely manner could result in a hold on funding, pursuant to 2 CFR §§ 200.338(a) and 200.207(b)(1)-(2).

This subaward is subject to requirements in Title 2, Code of Federal Regulations (CFR), Part 200, including the Notice of Funding Opportunity (NOFO), the Preparedness Grants Manual, the California Supplement to the NOFO, and all applicable federal, state, and local requirements. All activities funded with this subaward must be completed within the subaward period of performance.

Subrecipients must obtain additional written approval **prior** to incurring costs for activities such as aviation, watercraft, allowability request logs, noncompetitive procurement, and projects requiring Environmental Planning and Historic Preservation review.



3650 SCHRIEVER AVENUE, MATHER, CA 95655
(916) 845-8506 TELEPHONE (916) 845-8511 FAX
www.CalOES.ca.gov

Garry Herceg
October 22, 2019
Page 2 of 2

Your organization will be required to prepare and submit the Biannual Strategy Implementation Report to Cal OES via the Federal Emergency Management Agency's Grants Reporting Tool (GRT) semi-annually for the duration of the subaward period of performance or until all activities are completed and the subaward is formally closed. Failure to submit required reports could result in subaward reduction, suspension, or termination. Throughout the subaward cycle, milestones set in the GRT will be used as indicators of project feasibility, performance, and grant management capacity. This information may also be used in assessing proposals for future grant opportunities.

Your dated signature is required on this letter. Please sign and return the original to your Cal OES Program Representative within 20 calendar days upon receipt and keep a copy for your records. For further assistance, please contact your Cal OES Program Representative.

Sincerely,



MARK S. GHILARDUCCI
Director

DocuSigned by:

Garry Herceg

4A35B9110C5C4BE...

10/25/2019

Garry Herceg
Santa Clara County

Date



Standard Assurances For All Cal OES Federal Grant Programs

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) Federal Preparedness Grants Manual;
- (d) California Supplement to the NOFO; and
- (e) Federal and State Grant Program Guidelines.

Federal Regulations

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the [Office of Management and Budget \(OMB\)](http://www.whitehouse.gov/omb/) and can be found at <http://www.whitehouse.gov/omb/>.

Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. The Applicant hereby agrees to comply with the following:

1. Proof of Authority

The Applicant will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body; and
- (d) The official executing this agreement is, in fact, authorized to do so.



Standard Assurances For All Cal OES Federal Grant Programs

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

The Applicant will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.



Standard Assurances For All Cal OES Federal Grant Programs

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.213 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals, recipients, or subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:



Standard Assurances For All Cal OES Federal Grant Programs

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101-12213);
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;



Standard Assurances For All Cal OES Federal Grant Programs

- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;



Standard Assurances For All Cal OES Federal Grant Programs

- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (g) Executive Order 11514 which sets forth national environmental standards;
- (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (j) The Endangered Species Act of 1973, (P.L. 93-205);
- (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.



Standard Assurances For All Cal OES Federal Grant Programs

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Access to Records

In accordance with 2 C.F.R. § 200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

10. Conflict of Interest

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment - The Applicant will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subrecipient, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.



Standard Assurances For All Cal OES Federal Grant Programs

14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;



Standard Assurances For All Cal OES Federal Grant Programs

- (c) Assist the awarding agency in assuring compliance with Section 106 of the
- (d) National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and
- (e) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.



Standard Assurances For All Cal OES Federal Grant Programs

20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at CRCL@hq.dhs.gov or by mail at U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

In the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.



Standard Assurances For All Cal OES Federal Grant Programs

23. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

25. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

26. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

27. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

28. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.



Standard Assurances For All Cal OES Federal Grant Programs

29. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

30. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

31. Non-supplanting Requirement

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

33. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.



Standard Assurances For All Cal OES Federal Grant Programs

34. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

35. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

36. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

37. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.



Standard Assurances For All Cal OES Federal Grant Programs

IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the [Department of Homeland Security Standard Terms and Conditions 2018, Version 8.1](#), hereby incorporated by reference, which can be found at:
<https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)



Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure

Public Law (PL) 109-282 Federal Funding Accountability and Transparency Act of 2006, as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (PL 110-252), which is outlined in the Federal Emergency Management Agency, Grant Programs Directorate Information Bulletin No. 350.

As defined by the Office of Management Budget, the following are subject to FFATA reporting requirements:

1. All new federal awards of \$25,000 or more as of October 1, 2010.
NOTE: Cal OES reports on this requirement in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS).
2. The Total Compensation and Names of the top five executive, if the Subrecipient in the preceding year received:
 - a. 80 percent or more of its annual gross revenues in Federal Awards; **and**
 - b. \$25,000,000 or more in annual gross revenues from Federal awards; **and**
 - c. The public does not have access to information about the compensation of the senior executives of the entity.

Subrecipients are required to provide the Executive compensation information in the below chart, if applicable.

Executive Name	Title	Annual Salary	Annual Dollar Value of Benefits	Total Compensation

☐ Not subject to the Executive Compensation requirement of the FFATA Financial Disclosure.



Federal Funding Accounting and Transparency Act (FFATA) Financial Disclosure

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)



Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure of Lobbying Activities,' in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Certification Regarding Lobbying

The Subrecipient, as identified below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)

2019 EMPG

Project Proposal Request Form / Template



I. Background Information

I	A.	Requestor Contact Information
	Agency	Santa Clara County Office of Emergency Services
	Name	Ivan Williams
	Position/Title	OAC Liaison/Senior Management Analyst
	Phone	408-808-7835
	Mobile Number	
	Agency Address	Office of Emergency Services 55 West Younger Avenue, Suite 450 San Jose, CA 95110
	Email	
I	B.	Project Name
EOC Computers & Technology		
TOTAL PROJECT COST (Insert the total from Funding section)		\$100,000 (scalable)
I	C.	Project Type Use the checkbox to indicate corresponding project
	☐	This project is a new Project.
	☒	This project is part of an ongoing Project.
	☐	This project is for sustainment of a previously funded Project.

II. ALIGNMENT WITH NATIONAL PREPAREDNESS GOALS by Core Capability and Mission Area

I					D.	Solution Areas			
☐	Planning	☐	Organization	☒	Equipment	☐	Training	☐	Exercises
↓ ↓ ↓ ↓ ↓									
Choose ONLY one Sub Area (Sub Category) for Mission Areas above									
☐	Community Outreach	☐	Staffing	☒	Information Technology	☐	Staff Expenses	☐	Design/Develop
☐	Conference	☐	Day to Day Activities/ /operations that support emergency management	☐	Cyber Security Enhancement Equipment	☐	Course Development	☐	Conduct / Attend / Evaluate
☐	Develop and Enhance Plans, Protocols and Systems	☐		☐	Interoperable Communications Equipment	☐	Course Delivery and Evaluation	☐	Supplies / Materials / Production Costs
				☐	Other Authorized Equipment	☐	Staff Expenses	☐	
						☐	Certification / Recertification of instructors		

I E. Core Capability and Specific Measures/Metrics				
Identify which of the 11 Emergency Management Core Capabilities (or other Core Capability) this project addresses as well as the specific measures and metrics it is expected to improve or sustain.				
☒ Planning	☒ Public Information & Warning	☒ Operational Coordination	☐ Long-Term Vulnerability Reduction	☐ Risk and Disaster Resilience Assessment
☒ Situational Assessment	☐ Community Resilience	☐ Threats and Hazard Identification	☐ Logistics and Supply Chain	☐ Mass Care Services
☐ Economic Recovery	☐ Other (please specify) _____			
Please identify each specific measure/metric this project is expected to improve /sustain:				
1. Measure/Metric: Operational Coordination —Jurisdiction (County, Cities and Town) EOCs have information technology and communications equipment that is standardized and interoperable for information sharing with: local governments including special districts in the Op Area, County and city agency DOCs in the Op Area, Incident Command Systems in incorporated or unincorporated areas either directly or through DOCs in the Op Area, Volunteer and private agencies in the Op Area, Operational Area Mutual Aid Coordinators, CalOES Regional EOC and Regional Mutual Aid Coordinators.				
2. Measure/Metric: Situational Assessment —100% of Jurisdiction (County, City and Town) DOCs and EOCs have information technology equipment and software that is standardized/interoperable and can facilitate and maintain situational awareness across the Operational Area.				
3. Measure/Metric: Planning —Jurisdictions (County, Cities and Towns) have up-to-date computers and current and specific software tools to help its homeland security and emergency management planners effectively track, update, and manage its EOP.				
4. Measure/Metric: Public Information & Warning —Jurisdictions (County, Cities and Towns) can deliver an initial public warning to up to 50,000 people within 30 minutes following the discovery of the hazard causing the warning to be issued.				

I F. Project Description/Justification	
Briefly describe exactly what the project entails (including any equipment purchases or contracting that will be necessary for the project). Please also describe how the project is expected to impact (improve/sustain) the Core Capability(ies) and specific measures/metrics identified above.	
This project enables Operational Area emergency managers to fully leverage data communication capabilities and sharing of critical information in their EOCs. Computers support response and mitigation during emergencies and disasters via common operating picture and resource management web based programs such as Web EOC, HSIN, COPLink, Mutualink, etc. as well as by supporting situational awareness. Eligibility of Operational Area jurisdictions for this funding is based on the following criteria: <u>Equipment criteria—Laptops/Computers</u> - Funding is primarily for replacement of existing EOC laptops that are at least 4 years old. - Written justification must be provided if funding is requested for additional laptop capacity (i.e. non-replacement laptops) in the City/Town EOC. This written justification must identify the specific EOC needs the additional laptop(s) would provide for as well as specifically how the laptop will be used in the EOC during an activation. These requests will be evaluated and approved on an individual basis. - Funding is limited to a maximum of \$1,600 per computing device (including all peripherals, tax and shipping).	

- Grant funds cannot be used to purchase warranties, maintenance/service agreements, or software that aren't bundled/included with the laptop.
- Any computing device purchased under this project must be capable of running WebEOC—e.g. able to connect to the city/town network and run the necessary browser or other software to access WebEOC.

Equipment Criteria—

Projectors/Screens/Monitors/Displays/Printers/Laminators/Switches

- Each piece of equipment under this category must be fully described including both equipment quantities and specifications (e.g. 2 50" displays), where in the EOC it will be mounted/ located (e.g. North wall) and how it will be used (e.g. to provide situational awareness, WebEOC status boards, etc.).
- Mounted equipment will require State and Federal Environmental and Historic Preservation (EHP) approval prior to purchase of equipment. Forms must be submitted as soon as possible after grant award.
- Cost estimates, including actual bids/pricing information for the equipment must be provided to the grant manager for review and approval. The overall EOC technology project budget may require prioritization of individual jurisdiction's specific technology projects.

City/Town Criteria

- The City/Town must email their intent to use EMPG funding for computing devices—along with the number and type (e.g. laptop) of devices and any required justifications—by June 30, 2019.
- Each City/Town must enter into an MOU with the County for the computers by January 31, 2020.
- Each City/Town must procure any approved computers under an existing competitive contract OR obtain bids in accordance with local (City/Town) and Federal procurement rules (whichever is more restrictive).

Each City/Town must procure any approved computers / equipment and submit all invoices to the County Office of Emergency Services by March 15, 2020.

I	G.	Does this project require a sole source?
	☐ Yes	If "Yes", please explain ☒ No N/A

I	H. Installation Does this project require installation, new construction or renovation, retrofitting, or modification of existing structures?
	☒ Yes, If "Yes", please: ☐ No
	1. Provide an explanation AND 2. Attach a completed Environmental and Historic Preservation screening form (EHP) available from http://www.fema.gov/media-library/assets/documents/90195 Specific jurisdiction equipment may be mounted and require an EHP. Completed EHP forms will be required once a specific project that requires installation is selected.

FUNDING

III	A. Proposed funding amount Provide the proposed funding amount to be obligated from this Project towards Planning and Equipment elements. (Please check the appropriate box(es) on the left side for all that apply). Also, for each funding area selected, provide a brief narrative below describing the items or services being funded.
ELEMENT	PROPOSED FUNDING
☐ Planning	\$
☒ Equipment	\$100,000
☐ Management & Administration	\$
☐ Training	\$
☐ Exercise	\$
TOTAL PROJECT COSTS	\$

Description of Expenditures That Will Be Used for Project Grant Match
Emergency Management Personnel Expenditures via Functional Timesheets and Burdened Labor Rate.

AEL #	Equipment Use this link to locate and provide the Authorized Equipment number needed for equipment approval https://www.fema.gov/media-library/assets/documents/101566
☒ 04HW-01-INHW 04MD-03-DISP 04MD-02-PROJ	Information Technology
☐	Cyber Security Enhancement Equipment
☐	Interoperable Communications Equipment
☐	Detection Equipment
☐	CBRNE Reference Materials
☐	CBRNE Incident Response Vehicle
☐	Physical Security Enhancement Equipment
☐	Power Equipment
☐	CBRNE Logistical Support Equipment
☐	Other Authorized Equipment: Contact grants manager prior to selected this sub-category

III	B.	Other Source(s) of funding
		List other source(s) of funding that is being requested or utilized for this project (check the appropriate box(es) on the left side)
	ELEMENT	PROPOSED FUNDING
☐	UASI	\$
☐	SHSGP	\$
☐	General Funds	\$
☐	Other Grant Funds	\$
	TOTAL OTHER FUNDING	\$0

Other Funds:

Explain how any other funds, such as general funds, UASI, etc., will be used to assist in implementation of this project.

N/A

III. PROJECT MANAGEMENT AND IMPLEMENTATION

IV	A.	Milestones Identify up to 5 additional milestones, with start and end dates, which will be achieved within the performance period under the 2019 EMPG. No start date should begin before July 1, 2019 and no end date should end after June 30, 2020. These dates are subject to change based on notification of application approval. No equipment may be purchased, contracts started or project costs incurred until notified by Grant Administrator that funds may be spent. If unsure of exact dates, use Quarter timeframes Include key steps in the procurement process—i.e. RFP issuance, Contract execution, PR issuance, delivery, etc.		
MILESTONE NUMBER		MILESTONE NAME/DESCRIPTION (1,000 CHARACTER LIMIT)	START DATE (MM/DD/YYYY)OR Q1, Q2, Q3, Q4	END DATE (MM/DD/YYYY)OR Q1, Q2, Q3, Q4
1		MOU between City/Town and County in Place	As early as July 1, 2019	January 31, 2020
2		Functional Timesheet Collection and Submission to Grant Manager for Project Grant Match	July 1, 2019	June 30, 2020
3		Environmental Historic Preservation (EHP) FEMA Review Completed (If applicable)	As early as August 1, 2019	December 31, 2019
4		City/ Town Performance Period	As early as July 1, 2019	No later than April 30, 2020
5		City/Town Service Agreement for Contracted Services / Purchase Requisition Issued	As early as July 1, 2019	No later than January 31, 2020
6		City/Town Procurement of Project Equipment (once grant award is made and MOU is signed)	As early as August 1, 2019	No later than March 31, 2020
7		Installation and testing of Project Equipment	As early as November 1, 2019	No later than April 30, 2020
8		City/Town submits invoice to County for reimbursement	As early as December 1, 2019	No later than April 30, 2020
9				
10				

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)

IV	B.	Project Outcomes Describe the outcomes and benefits that will be achieved as a result of this project. The outcomes should address specific core capability measures/metrics.
		EOC laptops and EOC equipment will increase the ability for first responders and emergency managers to effectively collect and provide information and data throughout the operational area and region. In addition they enhance local emergency managers' abilities to respond to and mitigate the emergency or disaster. Laptops must meet minimum standard requirements to support WebEOC, HSIN, COPLink, and WebLink as well as other websites and software that may be needed in a disaster. A laminator with the capacity to create large sized documents and maps provides staff with the ability to quickly create operational maps and charts when a hazard occurs. Maps and charts of relevant information, such as the location of the city's power lines, can be made in advance and prepared so that in an emergent situation they can be quickly accessed and used. Staff will can affix the laminated documents to walls for easy viewing and updating by ops center personnel. Enhanced technology in EOCs create more efficient and effective Emergency Operations Center. The equipment will be interoperable with existing communications systems, enabling live updates during hazard events. Situational awareness will be available to all EOC personnel at all times, with multiple screens in various strategic locations around the room projecting and sharing updated information for events throughout the City/Town as well as the region. Updated technology facilitates the exchange of real time data with outside agencies and provides timely communication and notification to the public when a hazard occurs.
IV	C.	Project Deliverables Describe the specific deliverables that will be produced as a result of this project.
		EOC laptops for jurisdictions within the Operational Area capable of supporting and displaying WebEOC, HSIN, COPLink, and WebLink as well as the other work of an Emergency Operations Center during a disaster. EOC displays (projector, monitor, wall maps, etc.) will be upgraded to facilitate better situational awareness and to communicate a common operating picture within the EOC as well as facilitate interoperable communication with the public and outside agencies.

EOC TECHNOLOGY SURVEY RESULTS

Your City/Town	Is your City/Town interested in replacing outdated EOC laptops/ other EOC equipment using EMPG FY19 funds?	How many of your city's/town's current EOC computers/laptops are more than 4 years-old?	How old (in years) are your oldest EOC computers/laptops (please don't include Alternate EOC laptops when answering this)?	How many EOC computers/laptops is your city/town interested in procuring sometime between October 2019 and April 2020 using EMPG 2019 funds?	Is there other EOC equipment (e.g. displays, projectors, screens, switches) your city/town is interested in procuring with EMPG 2019 funds? If yes, please describe the equipment in the comments section below.	Comments/ Clarifications About Your Responses	Rough Budget Estimate
Campbell	Yes	4	6	5	No		\$8,000
Cupertino	Yes	6	5+	6	Yes	As this grant is for technical equipment would it include lock and docks including network connectivity for computers to keep them charged and updated? Is it possible to use this funding for fiber optic needs, internet/wifi connectivity? As technology is growing, changing and updating will the equipment made available through this grant also grow and change?	\$12,000
Gilroy	Yes	14	9	14	Unsure		\$22,400
Los Altos Hills	Yes	5	5	5	No		\$8,000
Los Gatos	Yes	10	4 years	10	Yes	Video display wall. Four 55" displays and media controller for multiple inputs.	\$15,000
Milpitas	Yes				Yes	high capacity printer/copier/scanner	\$5,000
Morgan Hill	Yes	5	9	5	Yes	Video Switch for multiple monitors/inputs and necessary connectors/amplifiers	\$16,017
Mountain View	Unsure				Unsure		\$0
Palo Alto	No				Yes	Palo Alto OES would like to purchase 6 to 8 computer monitors to function as a second display screen to existing laptop computers.	\$4,800
San Jose	Yes	13	8	16	Yes	16x16 HDMI Video Matrix Switch, 4K HDMI Quad Screen Multiviewer	\$45,600
Santa Clara	Yes	0	3	0	Yes	We are more interested at this time in procuring smart tvs/monitors to replace projectors & screens; also replacing older tvs with smart tvs for broadcasting..	\$15,000
Saratoga	No				No		\$0
Sunnyvale	No				No		\$0
							\$151,817

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)

EXHIBIT D

3.b

LABOR DISTRIBUTION TIME SHEET	Week Ending	First and Last Name										City/County Participating				
											Sample City					
WBS #													107-G107EM19			
PROJECTS	HOURS WORKED BY DAY															TOTAL HOURS
	M	T	W	TH	F	S	S	M	T	W	TH	F	S	S		
A - EMPG Grant Administration																
B - OAC Liaison																
C - CSTI Training																
D - EOC Computers																
E - ReadySCC																
F - Preparedness Materials and Outreach																
G - CADRE Community Preparedness																
H - JIC/JIS Video Equipment																
I - Joint City and Op Area Safety and Damage Assessment Plan Development																
Emergency Management PLANNING Activities																
Emergency Management TRAINING Administration, Development and Delivery Activities																
Emergency Management EXERCISE Activities																
EOC Operational Readiness Activities (e.g. EOC maintenance, radio checks, etc.)																
Public Risk Communication Officer/ PIO Activities																
Other Federal Grant Hours																
Total Work Hours (Max = 8 a day)																
Employee Signature _____ Supervisor's Signature _____																

Attachment: EXHIBIT B- EMPG MOU FOR 2019 Morgan Hill [Revision 1] (2678 : MOU For 2019 EMPG)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Shane Palsgrove, Police Captain
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO AGREEMENT WITH SECURE SOLUTIONS INC.

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the Second Amendment to the Agreement with Secure Solutions Inc. for a not to exceed amount of \$85,000 to conduct hiring background investigations of police personnel.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Community Engagement and Messaging

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Morgan Hill Police Department currently has a Consultant Agreement with Secure Solutions Inc. to conduct hiring background investigations for police personnel. The department is in the process of filing several new unanticipated vacancies including Police Officers, Dispatcher(s), Animal Services Officer and Records Specialist. Staff recommends amending the existing agreement with Secure Solutions Inc. by an additional \$15,000, for a new not to exceed amount of \$85,000 to accommodate background investigations for these unanticipated vacancies.

Background:

On July 31, 2018, the Police Department entered into a Consultant Agreement with Secure Solutions Inc. The Agreement was for an amount not to exceed \$45,000 based on a projection of the number of hires for a two-year period to conduct thorough background investigations on each candidate according to the guidelines established by Peace Officer Standards of Training (POST). Each individual investigation includes the following:

- An in-depth interview with the candidate and review of the Personal History Statement and any supplemental questionnaires depending upon the desired position.
- An investigation that includes local law enforcement criminal history check, verification of citizenship, education, DMV history, financial history, military history, and other applicable legal documents.
- Civil court records, to include dissolution of marriages, social media checks, contact with neighbors, relatives, and references, contact with current and past

employers and coworkers, review of available personnel files, academy files, and other relevant documents.

- Status of applications with other agencies where candidate has sought employment within the last two years.
- The backgrounds are conducted for all positions including Police Officer, Animal Services Officer, Multi-Services Officer, Dispatcher, Records Specialist and other administrative/support positions.

On April 5, 2019, the City entered into a First Amendment to the Agreement increasing the amount to \$60,000. Background investigations can cost a few hundred dollars to \$2,500 depending on location of the applicant and length of the investigation. Multiple applicants are sent to backgrounds for each position since the hiring standards are substantial. Prior to the background investigations, most applicants have already passed the application screening, oral boards, polygraph, and pre-psychological assessment in order to keep cost at a minimum.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the City's desire to amend the Agreement in order to avoid interruption of the hiring process for several vacancies.

ALTERNATIVE ACTIONS:

Council could direct staff to seek and contract with alternative firm(s) to provide the background investigation services to fill the current vacancies within the Police Department.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There are no prior Council and or Commission actions for this item.

FISCAL AND RESOURCE IMPACT:

There are sufficient funds in the adopted FY 2019-20 Police Department's operating budget, within the General Fund (010), to cover the additional \$15,000 of unanticipated costs.

CEQA (California Environmental Quality Act):

Not a Project.

This Agreement entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Second Amendment Secure Solutions

SECOND AMENDMENT TO AGREEMENT SECURE SOLUTIONS

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and SECURE SOLUTIONS, a California Sole Proprietorship ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of July 31, 2018, for consultant services for a maximum compensation of Forty-Five Thousand and no/100 dollars (\$45,000.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of April 5, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00). The CONSULTANT AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

4.1 **Amount.** Compensation under this Agreement shall not exceed EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00) and shall be billed based on the rate and basis set forth in **Exhibit B.**

///

///

///

///

Signatures on the Next page

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

 Michelle Bigelow, City Clerk

Date: _____

 Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

SECURE SOLUTIONS

 Donald A. Larkin, City Attorney

Date: _____

 By:

Title:

Kurt Ashkey - Owner

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date:

2/29/2020

 By:

Title:

Print Name and Title of Signer.

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

Date: _____

FIRST AMENDMENT TO AGREEMENT SECURE SOLUTIONS

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 4/5/19 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and SECURE SOLUTIONS, a California Sole Proprietorship ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of July 31, 2018, for consultant services for a maximum compensation of FORTY-FIVE THOUSAND AND NO/00 DOLLARS (\$45,000.00) The CONSULTANT AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

4.1 **Amount.** Compensation under this Agreement shall not exceed SIXTY-THOUSAND AND NO/DOLLARS (\$60,000.00) 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.

///
///
///
///
///
///
///
///
///
///
///
///

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

Michelle Boyles

City Clerk

Date: 4/19/19

APPROVED AS TO FORM:

Donald A. Larkin

for Donald A. Larkin, City Attorney

Date: 3-27-19

CITY OF MORGAN HILL

Christina J. Turner

Date: 4-5-19

SECURE SOLUTIONS

By: Kurt Ashley

Title: KURT ASHLEY - OWNER

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 3/26/2019

By:

Title:

Print Name and Title of Signer.

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

Date:

EXHIBIT "1"

CONSULTANT AGREEMENT
Secure Solutions Inc.

THIS AGREEMENT is entered into and becomes effective on 7/31/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Secure Solutions a California sole proprietorship ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be provided as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$45,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed forty-five thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service 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. 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) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

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

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

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

7.2.1. **General Liability.**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

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

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

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

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

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

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

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

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.
11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.
12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Secure Solutions Inc.
8505 Church Street, Suite 17
Gilroy, Ca 95020

Address of CITY is as follows:

David Swing, Chief of Police	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.

[Signatures on Next Page]

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

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

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

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

ATTEST:

[Signature]
 City Clerk/Deputy City Clerk

[Signature]
 Michelle Bigelow
 Print Name

Date: 7/31/18

APPROVED AS TO FORM:

[Signature]
 City Attorney

[Signature]
 Donald A. Larkin
 Print Name

Date: 7-26-18

CITY OF MORGAN HILL

[Signature]
 City Manager

Christina J. Turner
 Print Name

Date: 7/31/2018

SECURE SOLUTIONS, sole proprietor.

[Signature]
 By:

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

Date: 7/23/18

By:

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

Date:

**EXHIBIT A
SCOPE OF SERVICES**

Secure Solutions will perform the following:

Conduct a thorough background investigation of each candidate according to the guidelines established by POST (Peace Officer Standards of Training). Each investigation will include the following:

An in-depth interview with the candidate and review of the Personal History Statement and any supplemental questionnaires.

An investigation that will include:

- **Local law enforcement criminal history check.**
- **Verification of citizenship, education, DMV history, financial history, military history, and other applicable legal documents.**
- **Civil court records, to include dissolution of marriages.**
 - Social media checks.**
 - Contact with neighbors, relatives, and references.**
- **Contact with current and past employers and coworkers.**
 - Review of available personnel files, academy files, and other relevant documents.**
- **Status of applications with other agencies where candidate has sought employment within the last (2) two years.**

EXHIBIT B **SCHEDULE OF COMPENSATION RATES**

PROPOSED BILLING RATES:

Service	Rate
Basic Police Officer Background (4 weeks)	\$1,500
Basic Dispatcher Background (4 weeks)	\$1,400
Expedited Background (14 days)	\$2,000
Disqualified after PHS interview	\$350 (plus expenses)
Credit Reports	\$35.00
DMV Records	\$35.00
County Civil Records Checks	Agency charge (\$1-\$30)
Local Law Enforcement Agency Records	Agency charge (\$1-\$15)
Employment Verification Service Charges (if required)	\$39.00 each employer
Travel/Time Mileage	\$.55 per mile *
Per Diem for extended travel (250+ miles round trip)	\$150 per day **

* Based on annual state rate

** Must be previously approved by agency

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

SECURE SOLUTIONS AGREES:

To submit completed background investigation reports within four (4) weeks after the background interview barring any unforeseen issues.

To conform to all applicable federal and state laws and regulations in the performance of the background investigation, retention of information, and reporting to the Morgan Hill Police Department.

That the investigation and the report are confidential and the property of the Morgan Hill Police Department.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

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

APPROVE CITY SPONSORSHIP OF PHILANTHROPY NIGHT, INDIA INDEPENDENCE DAY FESTIVAL, AND FUTURE WOMEN LEADERS CONFERENCE EVENTS AT THE COMMUNITY AND CULTURAL CENTER

RECOMMENDATION(S)

1. Authorize the City Manager to waive facility rental fees of \$3,000 for Morgan Hill Community Foundation's November 2020 Philanthropy Night Celebration;
2. Authorize the City Manager to waive facility rental fees of \$615 for Indian Association of South Santa Clara County's August 2020 India Independence Day Festival and flag raising ceremony; and
3. Authorize the City Manager to waive facility rental fees of \$3,000 for American Association of University Women's April 2021 Future Women Leaders Conference.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

2020-2021 Strategic Priorities

Community Engagement and Messaging

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

Three organizations have requested facility rental fee waivers for use of the Community and Cultural Center (CCC). Staff recommends City Council sponsorship of these community events by directing the City Manager to waive the facility rental fees. If the requested fee waivers are approved, the City of Morgan Hill will be recognized as a sponsor in all event materials and marketing. Supporting these community events is in alignment with the Sustainable Morgan Hill Vision of inclusion and social responsibility and City Council's ongoing priorities of supporting our youth, seniors, and the entire community and enhancing diversity and inclusiveness.

Morgan Hill Community Foundation Philanthropy Night Celebration

The Morgan Hill Community Foundation (MHCF) holds an annual Philanthropy Night Celebration to highlight the work of local nonprofits and honor individuals who have made outstanding contributions to how that nonprofit serves the Morgan Hill community.

Philanthropy Night recognizes the importance of community involvement and volunteerism in Morgan Hill. For the last several years, the City has supported this event by waiving facility room rental fees of \$3,000 for use of the CCC. The MHCF Board is requesting City sponsorship of the November 13, 2020 Philanthropy Night by waiving facility rental fees (Attachment 1). The direct cost of having a City teammate staff the event and the required security would be paid by the MHCF.

The MHCF is a tax-exempt, public charity focused on addressing community needs by supporting programs within the Morgan Hill Unified School District boundaries. The MHCF is committed to enriching the quality of life for residents in the greater Morgan Hill area by serving as a fiscal sponsor and awarding grants to local community nonprofit organizations that provide valuable programs and activities. In 2019, MHCF granted over \$16,000 for funding various projects and expanded funding for local school programs and projects.

Indian Association of South Santa Clara County Flag Raising Ceremony

In recognition of the annual Indian Independence Day, the Indian Association of South Santa Clara County (IASC) proposes to hold a flag raising ceremony on August 16, 2020 at the CCC campus. In addition, IASC is requesting to have the flag raised for a few days after the event. The organization is requesting waiver of the amphitheater facility rental fees of \$615 (Attachment 2). The cost of having a City teammate staff the event will be paid by IASC. The event times will be early enough in the day to not impact evening rentals at the CCC.

IASC is a nonprofit organization that serves Morgan Hill, Gilroy, San Martin, South San Jose, and Hollister. The organization's mission is to bring all generations of South Santa Clara County's Indian community together to promote our diverse culture and heritage. During the event, IASC will host guest speakers and cultural performances at the Morgan Hill Amphitheater. IASC has held an India Independence Day event in Morgan Hill since 2013, and it will again be free and open to the entire community.

American Association of University Women Future Women Leaders Conference

On April 17, 2021, the Morgan Hill Branch of the American Association of University Women (AAUW) will hold the annual Future Women Leaders Conference (FWLC) at the CCC. The event will utilize five conference rooms and the El Toro room from 8:30am-4:30pm for workshops and presentations; the Hiram Morgan Hill Room from 8:30am-12:00pm for keynote speakers and activities; and the amphitheater area from 10:00am-4:00pm for a Community Earth Day festival. The FWLC team hosting the conference is made up of students living in Morgan Hill and attend Live Oak, Sobrato, Oakwood, Mt. Madonna, and Gilroy Early Education Academy. The conference goals are to focus on promoting community leadership skills in our high school and college aged population.

AAUW is requesting a waiver of CCC facility rental fees of \$3,000 for the 2021 conference (Attachment 3). The cost of a teammate to staff the event will be paid by AAUW. The events are planned early in the day to allow for a Hiram banquet room evening rental.

AAUW is a leading voice in promoting equity and education for women and girls. It is a national, state, and local nonpartisan, nonprofit organization with over 170,000 members and supporters nationwide, 1,000 local branches, and 800 college/university institution partners. Founded in 1881, AAUW is open to all graduates who hold an associate or higher degree from a regionally accredited college or university. AAUW's mission is to advance equity for women and girls through advocacy, education, philanthropy, and research. AAUW's local Morgan Hill Branch was chartered in 1981 and has over 160 members.

COMMUNITY ENGAGEMENT: Collaborate

This request is an opportunity to support local community based nonprofit organizations that are committed to strengthening the Morgan Hill community. The events are activities that support and promote community and local partner involvement.

ALTERNATIVE ACTIONS:

1. The Council could elect to not approve one or more of the requested fee waivers.
2. The Council could elect to waive a smaller amount for one or more of the requested fee waivers.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 6, 2019, the City Council approved facility rental fee waivers for the MHCF 2019 Philanthropy Night; AAUW 2020 Future Women Leaders Conference; and IASC 2019 Indian Flag Raising Ceremony.

On March 6, 2019, the City Council authorized the City to display the national flag of India at the Community and Cultural Center annually for one week each August.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of the proposed fee waivers is a loss of \$6,615 in facility rental revenue in Fiscal Year (FY) 2020-2021. The additional expenses for staffing, security services, and other related events costs will be paid by the organizations.

CEQA (California Environmental Quality Act):

Categorical Exemption

Hosting events at the Community and Cultural Center is part of the planned management of City facilities and falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. MHCF Fee Waiver Request Letter
2. IASC 2020 Fee Waiver Request Letter
3. AAUW 2021 Fee Waiver Request Letter



February 25, 2020

Dear Morgan Hill City Council:

The Morgan Hill Community Foundation (MHCF) is a tax-exempt, public charity focused on addressing community needs by supporting programs within the Morgan Hill Unified School District boundaries.

Each year in November the MHCF hosts Philanthropy Night, a banquet and gathering to highlight the work of local non-profits and honor individuals who have made outstanding contributions to how that non-profit serves the community of Morgan Hill. This is MHCF's primary fundraiser with the money raised going directly back into the local community through our grants process and supporting our non-profit partner organizations. For the past several years, the City of Morgan Hill has supported this event by waiving the room rental fees for use of the Community and Cultural Center.

The MHCF is requesting that the City continue to waive the rental fee of \$3,000.00 for the 2020 Philanthropy Night Celebration, scheduled for Friday November 13, 2020. The direct cost of a building coordinator, licensing, and required security would still be paid for by the MHCF. As part of the agreement, the MHCF will provide the City of Morgan Hill with a table for 8 guests, which includes the City's honoree should they nominate someone, at no cost. Additionally, the City of Morgan Hill would be recognized as an event sponsor in all materials, marketing, and advertising for the event.

The MHCF enriches the quality of life for residents in the greater Morgan Hill area in a variety of ways. The MHCF serves as a fiscal sponsor for 10 local community non-profit organizations. Our annual grant cycle award grants to local non-profit organizations for projects to enrich and improve our community. In 2019 we granted out over \$16,000: funding projects for the Morgan Hill Community Garden, South Valley Science and Engineering Fair, Loaves & Fishes, and All Animal Rescue and Friends, and others. For the first time in 2019 expanded our grants program to include a funding for local school programs & projects, broadening our support for the local community. We awarded \$4,000 in school grants to Los Paseos Elementary, Voices Academy, Live Oak Robotics Club, and Martin Murphy Middle School.

The Philanthropy Night Celebration recognizes the importance of community involvement and volunteerism in Morgan Hill. Staff recommends that Council sponsor this important community celebration by directing the City Manager to waive the rental fee of the Community and Cultural Center to the MHCF for the event on November 13, 2020. Support of this Philanthropy Event is consistent with the Councils' priorities of enhancing community engagement, promoting diversity, supporting our youth.

Sincerely,

Nick Gaich

Board President, Morgan Hill Community Foundation

(408) 772-1566

nickgaich@aol.com



Dear Morgan Hill City Council,

As you may know, the Indian Association of South Santa Clara County (IASC) is once again raising the Flag of India at our Annual Independence Day Ceremony on Sunday Aug 16th at 10am at the Community and Cultural Centre.

This letter is a humble request for any fee waivers for Event rental and also to keep the flag raised for a few days after the ceremony.

We're told all requests must be approved by the Council, so if you would be so kind as to approve this, since we are a Non-Profit, we would really appreciate it. Please let us know if you have any questions. We hope to see all of you at the Flag raising ceremony!

Thank your consideration,

Poonam Chabra
President, [IASC](#)
408-310-3515

Attachment: IASC 2020 Fee Waiver Request Letter (2672 : Facility Use Fee Waivers)



AAUW Morgan Hill P O Box 1528
Morgan Hill, CA 95038

February 24, 2020

Subject: Request for fee waiver for use of Morgan Hill's Community and Cultural Center for April 17th, 2021.

Thank you for waiving fees for several of the Community and Cultural Center rooms for the Young Women Leaders conference for the past three years, any help we get lets us put more of our limited resources toward the conference.

The April 17th, 2021 event will utilize:

Five conference rooms and the El Toro Room from 8:30 -4:00 for workshops and presentations
Hiram Morgan Room from 8:30 to noon for key note speaker and activities
Patio and stage area from 10:00 – 4:00 pm for AAUW sponsored Community Earth Day festival.

The YWL team hosting the conference is made up of students living in Morgan Hill and going to Live Oak, Sobrato, Oakwood, Mt. Madonna and GECA high schools.

The roles of the students include the general organizations of the program including; facilities, speakers, workshops, publicity, food and other issues. Waiving the fees for CCC will enable them to complete their mission without being burdened with the additional task of fundraising.

The facilities will be used for six hours of presentations, workshops and interactive activities focused on promoting community leadership skills in our high school and college aged population. In addition to the workshop presentations, conference participants will receive lunch, tee shirts and other materials to keep inspiring, motivating and reminding them of the what they have learned and why they are now ready to step up and take on even bolder positions in their school and community.

We are looking forward to working with you, as we have in past years, to provide a quality event that will enhance, motivate and educate our future leaders.

Thank you for considering our request

Margaret McCann
Young Women Leaders Advisor

Attachment: AAUW 2021 Fee Waiver Request Letter (2672 : Facility Use Fee Waivers)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

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

AWARD MORGAN HILL INCLUSIVE PLAYGROUND/MAGICAL BRIDGE PROJECT

RECOMMENDATION(S)

1. Adopt resolution to appropriate an additional \$701,079 in the Park Impact Fund (301) for the Morgan Hill Inclusive Playground/Magical Bridge Project;
2. Approve the Morgan Hill Inclusive Playground/Magical Bridge Project Plans and Specifications;
3. Award contract to CRW Industries, Inc. for the Morgan Hill Inclusive Playground/Magical Bridge Project in the amount of \$5,562,090;
4. Authorize expenditure of construction contingency funds not to exceed \$556,209; and
5. Authorize the City Manager to execute and administer the construction contract with CRW Industries, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

Background

Since early 2015, the City and numerous volunteers have partnered to construct an Inclusive Playground in Morgan Hill. An “inclusive playground” differs from an “accessible playground” in that it has the aim to make it not only accessible to those with mobility issues, but just as importantly, to encourage and enable all children to engage with one another while using the playground.

The effort has gone through numerous evolutions, with volunteers starting under the auspices of the Morgan Hill Community Foundation as the Morgan Hill Inclusive Playground Committee. The Committee and City developed an initial concept design for

the Playground with Verde Design in late 2015. The City eventually partnered with the Magical Bridge Foundation who were hired to design the park, support grant writing, and fundraise for the Playground. Ultimately, fundraising efforts were not as successful as originally anticipated, but the City did receive significant grant funding, and the Magical Bridge Foundation successfully designed the project for bidding.

Bids Received

The plans and specifications were completed in January 2020 and the project was advertised for bidding starting January 31, 2020. The scope of work for this project includes the demolition of the existing small community park playground area and the construction of a new expanded playground. Additional work will include but is not limited to the following: earthwork, material export, grading, site drainage, parking lot, playground area, paving, fencing, signage, site furnishings, irrigation, planting, electrical, signage, striping, and prefabricated restroom.

Staff and the Magical Bridge Foundation set forth with bidding the project with a base bid and seven additive alternatives. The base bid is to construct the playground with minimal amenities and the seven additive alternatives are items that will further enhance the project. The description of the seven additive alternatives are as follows:

- Additive Alternative #1 – Second Restroom Building for Access Outside the Playground
- Additive Alternative #2 – Water Zone Area – Rubberized Mulch with Bison Hand Pump
- Additive Alternative #3 – Installation of the Retreat Huts with 6" Thick Concrete Pad
- Additive Alternative #4 - Fire Demonstration Garden – Installation of Planting/Irrigation
- Additive Alternative #5 – Sand Play Area – Installation of Concrete Pathway, Concrete Curb, Catch Basin, Drain Line, and Sand
- Additive Alternative #6 – Install Shade Sails over the Slide Mound Area
- Additive Alternative #7 – Install Security Cameras

The bid opening was held on March 4, 2020 and three bids were received:

	CRW Industries, Inc.	Robert A Bothman Construction	Suarez & Munoz Construction, Inc.
Base Bid	\$5,075,984	\$5,754,970	\$6,440,000
Add Alt #1	\$279,425	\$360,079	\$345,000
Add Alt #2	\$10,500	\$21,216	\$30,000
Add Alt #3	\$123,033	\$131,032	\$215,000
Add Alt #4	\$23,619	\$42,761	\$50,000
Add Alt #5	\$64,046	\$86,692	\$100,000
Add Alt #6	\$110,343	\$175,109	\$150,000
Add Alt #7	\$32,292	\$49,739	\$85,000
Subtotal	\$5,719,242	\$6,621,598	\$7,415,000

The bid proposals received were structured such that the lowest base bid was the lowest responsible bidder. For this project, the apparent lowest responsible bidder was CRW Industries, Inc.

CRW Industries, Inc.'s base bid of \$5,075,984 is approximately 30% higher than the engineer's estimate of \$3.9 million. This is most likely due to the additional costs involved for both labor and equipment of the specified play equipment.

CRW Industries, Inc. is an experienced contractor with many years of experience in construction. Staff recommends the award of this project with Additive Alternatives #1, #5, #6, and #7 for a total of \$5,562,090. Additionally, staff recommends a 10% contingency in the amount of \$556,209. The project is scheduled to begin in April 2020 and expected to be completed by May 2021, assuming no significant delays.

Alternative #1 was selected to provide an additional restroom so that general park users would not have to enter through the playground to reach the restrooms, increasing security for playground visitors. Alternative #5, the Sand Play Area, is recommended, as several donors were encouraged by this element. Alternatives #6 (Shade Structures) and #7 (Security Cameras) are recommended based on health and safety factors.

The project plans and specifications may be found on the City's website in the [Community Projects page](#).

COMMUNITY ENGAGEMENT: Inform and Involve

This project was brought forward by community members and is being driven by community members. The design process was developed and coordinated by the Morgan Hill Inclusive Playground Committee volunteers. This committee has continued to be involved with the design process and help drive the project to the goal of completion.

Prior to and during construction, staff is committed to 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 ensure that lower bid proposals will be received and will delay the project for a minimum of four months. Additionally, this project includes a significant amount of grant funding and is time sensitive to be completed by May 2021.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

May 17, 2016 – City Council approved the concept designs for the Inclusive Playground Project.

June 21, 2017 – City Council approved updates for the Capital Improvement Plan, including funding in FY 2017-18 for the Inclusive Playground Project.

July 19, 2017 – City Council approved an agreement with the Magical Bridge Foundation for the support in fundraising, grant writing, and design for the Morgan Hill Inclusive Playground.

October 4, 2017 – City Council authorized the City Manager to apply for the County of Santa Clara All Inclusive Playground Grant, which the City was ultimately awarded \$2 million towards the playground.

October 17, 2018 – City Council authorized the City Manager to enter into a design agreement with the Magical Bridge Foundation for the completion of designs for the playground project.

December 19, 2018 – City Council approved the Magical Bridge Morgan Hill Playground Concept Design.

FISCAL AND RESOURCE IMPACT:

Description	Amount
CRW Industries, Inc. Construction Contract	\$5,562,090
10% Contingency	\$556,209
Project Implementation and other Construction Related Costs	\$225,780
Total Construction and Implementation Cost	\$6,344,079
Existing Appropriation in Adopted CIP	(\$5,643,000)
Additional Appropriation Required	\$701,079

If approved as recommended, the contract amount for the construction portion of this project with CRW Industries, Inc. is \$5,562,090. Additionally, staff is requesting an authorization of 10% contingency in the amount of \$556,209 for a total cost of \$6,118,299. Additional project expenses, including project implementation, permit fees, design, and other construction related expenses outside of the construction contract are anticipated to be \$225,780. The overall total project cost is \$6,344,079.

The adopted FY2019-20 Capital Improvement Program (CIP#137015) for Morgan Hill Inclusive Playground/Magical Bridge Project has a total of \$5,643,000 appropriated. With existing adopted appropriation, and the additional appropriation of \$701,079 requested, this project will be fully funded.

This project has a significant amount of funding committed from grants and donations, including:

- \$2,000,000 – County All Inclusive Playground Grant
- \$200,000 – Funding Agreement with the County Office of Education
- \$150,000 – County Parks Grant
- \$210,000 – Donations with the Magical Bridge Foundation
- \$70,000 – Donations with the Morgan Hill Community Foundation
- \$70,000 – Donations pledged to the City of Morgan Hill

The Park Maintenance Budget includes approximately \$50,000 annually for the future maintenance of the Playground. The Edward Boss Prado Foundation has committed to funding \$5,000 towards this maintenance annually. Additionally, the City will be looking to reduce maintenance costs further through the use of volunteers and the formation of a Friends Group that may look to continue fundraising efforts for ongoing maintenance. It is also anticipated that the Playground will help directly generate significantly more picnic reservation revenue and indirectly will drive Economic Development as visitors are drawn to the only inclusive playground in South Santa Clara County and one of the premier playgrounds in the entire State.

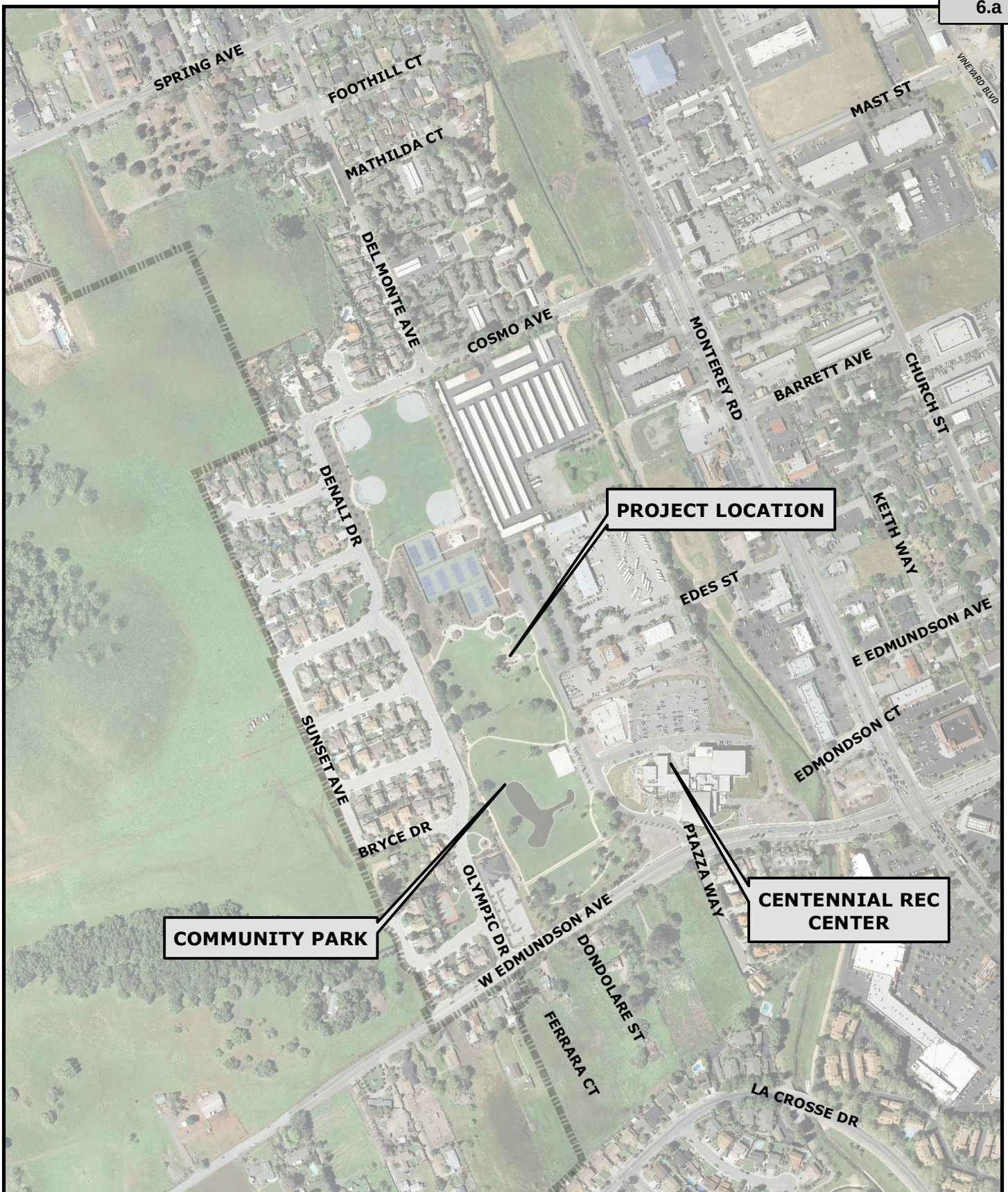
CEQA (California Environmental Quality Act):

Categorical Exemption

A Notice of Exemption was filed for the project in November 2017 based on the categorical exemption 15301 – Existing Facilities, 15304 – Minor Alterations to Land, and 15311 – Accessory Structures.

LINKS/ATTACHMENTS:

1. Vicinity Map - Inclusive Playground
2. Resolution



Attachment: Vicinity Map - Inclusive Playground (2679 : Award Morgan Hill Inclusive Playground/Magical Bridge Project)



CITY OF MORGAN HILL

Engineering and Utilities Department
Capital Improvement Division

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

MORGAN HILL INCLUSIVE PLAYGROUND/ MAGICAL BRIDGE PROJECT



0 187.5 375 750 1,125 1,500
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 \$701,079 IN THE PARK IMPACT FEE FUND (301) FOR THE CONSTRUCTION OF THE MORGAN HILL INCLUSIVE PLAYGROUND/MAGICAL BRIDGE 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 18th 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 18th 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 #**

021

FUND:**DEPARTMENT:****OBJECT:**

301	Park Impact Fund
8051	Park Development
86360	CONSTRUCTION

AGENDA DATE:**AGENDA ITEM TITLE:**

03/18/20
Morgan Hill Inclusive Playground

	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	-	401,660	1,686,959	(1,285,299)
RECOMMENDED ACTION		2,700,000	701,079	1,998,921
RESULT OF RECOMMENDED ACTION	4,116,066	5,749,222	7,568,840	2,296,448



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

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.

On March 4, 2020, the City Council adopted Ordinance No. 2316 New Series, by unanimous vote. This item is returning to Council to comply with the noticing requirement regarding timing between introduction and adoption.

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
18th 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 (2689 : 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 18th 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 (2689 : Adopt Ordinance 2316 CalPERS Contract Amendment)

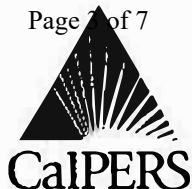


EXHIBIT A

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, March 4, 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 7:00 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

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 shared that he sits on the Board of Directors for the Peninsula Division of the League of California Cities. The division was very effective this year in getting climate change included as one of the Board of Directors for the League of California Cities (League) Goals. Morgan Hill is very well represented at the League level with Morgan Hill City Council Members occupying two of the fourteen League policy seats. In addition to those seats, we have a Council Member appointed through the League Women's Caucus and a staff member that is appointed to a policy committee by the President of the League.

He shared that a couple weeks ago, most of the Council attended the State of the Valley Address where they heard a shift in the message that has been delivered the last couple years. The dialogue has shifted from how great and innovative we are to we are starting to lose our edge because the talent cannot afford to live here, and we do not have adequate transportation.

He concluded by announcing that Rotary has postponed its Harvey Bear Senior Dinner that was scheduled on March 14th as a precautionary measure due to the Coronavirus.

CITY MANAGER'S REPORT

City Manager Christina Turner provided an update regarding the Coronavirus. She announced that the Mayor's State of the City Address will take place on Wednesday, March 11th at 7:00 pm at the Community and Cultural Center. New this year, representatives from the City and local partners will be available to answer questions and provide information on a variety of local services and programs. She announced that the interviews for the Library, Culture, and Arts Commission and Parks and Recreation Commission will be held at the City Council meeting on Wednesday, March 18th and encouraged those that are interested to apply. She mentioned that Earth day is coming up on Saturday, April 18th and announced that there will be a free event at the Community and Cultural Center starting at 9:00 am with local cuisine provided by the local chapter of the American Association of University Women (AAUW). In conjunction with the Earth Day event, the Young Women Leaders Conference will also take place that day. She shared that the Community Garden Grand Opening will take place on Saturday, April 25th with more details to come.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin spoke regarding the PLAN JPA which the City is a part of. At the PLAN's Strategic Planning Session in February, he learned that the City can expect its costs to go up in the next fiscal year, primarily due to global factors such as climate change, specifically the wildfires we have been having and cybercrime.

OTHER REPORTS

Mayor Pro Tem Martinez Beltran congratulated those that were elected to serve us in Santa Clara County. She shared her hope that the community will take the energy they used to defeat Measure A in a

path forward.

She shared that March is Women's History Month and March 8th is International Women's Day. To celebrate, she is holding a Paint and Nibble on the 8th at noon at Opa on the patio and costs \$45. The event will host local artist Ignacio (Nacho) Moya who will lead the group in painting eight different female icons from history.

PUBLIC COMMENT

The public comment opened at 7:20 pm. The following people were called to speak:

Joe Baranowski

Riyani Patel

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

MOTION:

Approving Consent Calendar Items 2 through 4, 6, 7, and 9 through 11.

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

1. ITEM PULLED FOR DISCUSSION

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. ITEM PULLED FOR DISCUSSION

6. APPROVE BUTTERFIELD VILLAGE - SUTTER BOULEVARD EXTENSION IMPROVEMENT AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute 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. ITEM PULLED FOR DISCUSSION

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.

ITEMS PULLED FOR DISCUSSION**1. ACCEPT JANUARY 2020 FINANCIAL AND INVESTMENT REPORT**

Recommendation:

Accept and file report.

Finance Director Dat Nguyen answered questions.

RESULT:	ACCEPT REPORT
----------------	----------------------

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.

The public comment opened at 7:32 pm.

Joe Baranowski was called to speak.

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

MOTION:

Continuing the item to a future meeting.

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

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.

Yat Cho provided the report and answered questions.

MOTION:

Approving the recommended actions.

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

The meeting recessed at 7:54 pm.

The meeting reconvened at 7:59 pm.

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.

City Manager Christina Turner introduced the item and Valley Water Board of Directors representative for District 1, John Varela. Director Varela introduced Chris Hakes and Rachel Gibson with Valley Water who provided reports.

The public comment opened at 8:49 pm.

Doug Muirhead was called to speak.

There being no further requests, the public comment closed.

MOTION:

Directing staff to submit letter in support of AB 3005 to the appropriate representatives and add the following language: Work with Valley Water to ensure that once the pipe is completed, we are allowed to have downstream flows again, and allow some water into the reservoir, that we work to rebuild the habitat that we are afraid we are going to be losing.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Mayor Pro Tem Martinez Beltran asked that staff look into recycled water.

Council Member McKay asked for a Council Policy and/or discussion regarding announcements.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:55 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

APPROVE 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) preparing a full water and wastewater capacity assessment 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). This analysis will tier off of the 2016 MH2035 General Plan EIR, which was prepared for the City of Morgan Hill by DJPA.

By continuing to use DJPA to perform this work, the City will save hundreds of thousands of dollars, because the consultants have already completed some of the work, and they will be able to use much of the work they prepared for the General Plan EIR. Hiring a new consultant would require much of that work to be re-done.

This contract was originally introduced at the March 4, 2020 City Council meeting, where the City Council requested that the item be held and rescheduled to a

subsequent meeting to allow the Council time to review an objection from a member of the public. Councilmember Carr requested that the item be placed on the regular agenda at that time.

Following the March 4 meeting, the "Performance of Work" section of the contract was revised to add language identifying the purposes of the CEQA statute.

BACKGROUND:

A consultant agreement with DJPA 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.

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. David J. Powers Associates- Annexation EIR
2. Settlement Agreement with the Santa Clara County LAFCO
3. 2018 David J. Powers Associates 06 Orig Annexation EIR
4. 05 Supplement 1

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.

6.1. **Basic Purposes of CEQA.** CONSULTANT acknowledges the basic purposes of CEQA are to:

- 6.1.1. Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
- 6.1.2. Identify ways that environmental damage can be avoided or significantly reduced.
- 6.1.3. Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- 6.1.4. Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

6.2. **Schedule of Performance.** 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.

6.3. **Consultant's Equipment.** 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

Michelle Bigelow

Print Name

Date: _____

APPROVED AS TO FORM:

 City Attorney

Donald A. Larkin

Print Name

Date: _____

 City Manager

Christina J. Turner

Print Name

Date: _____

DAVID J. POWERS & ASSOCIATES, INC.

Akoni O'Rourke

By: _____

Akoni O'Rourke, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

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 (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.

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
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

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.

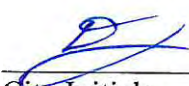
- 3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.
- 3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as 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

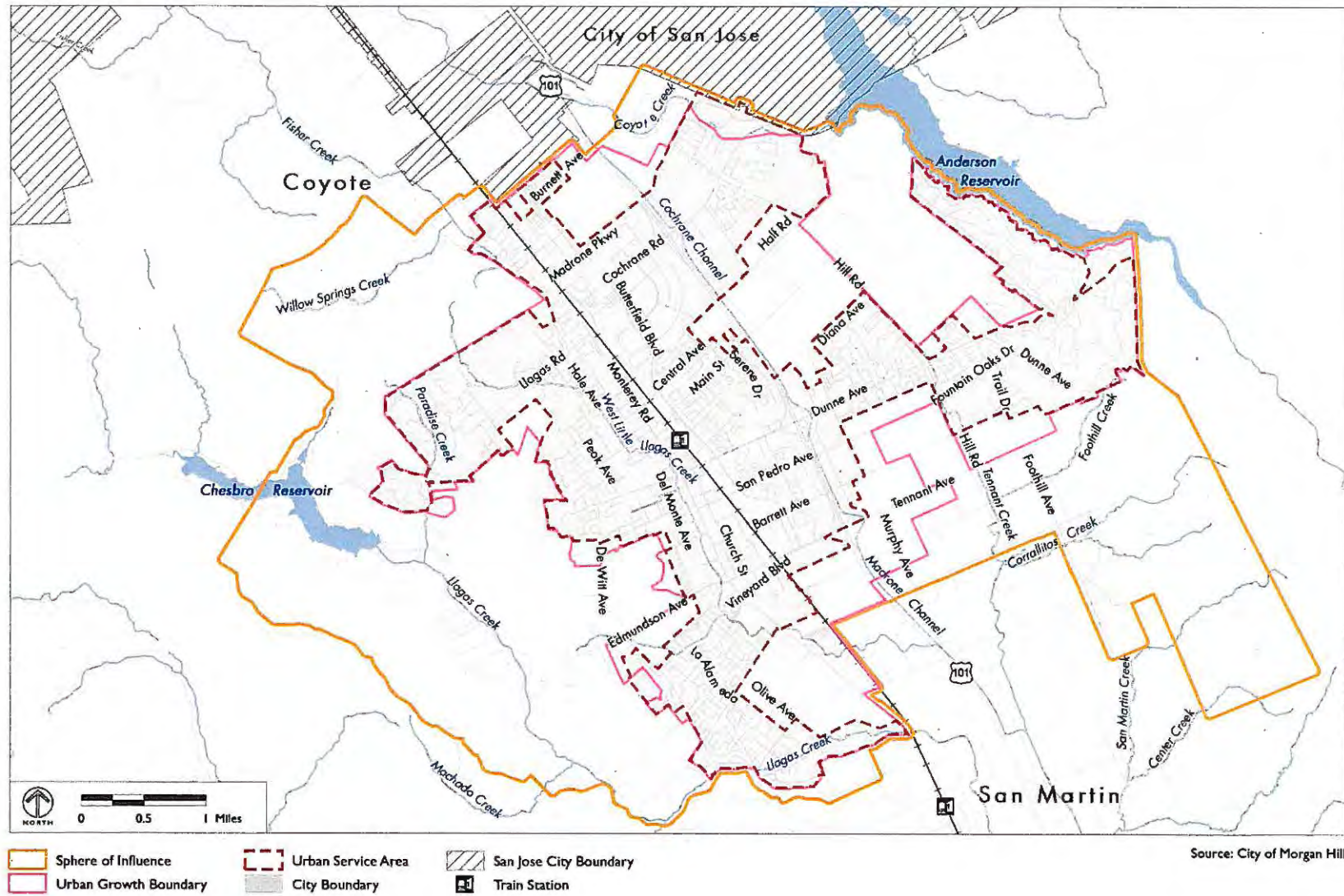
Title: City Attorney

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.

//

//

//

//

//

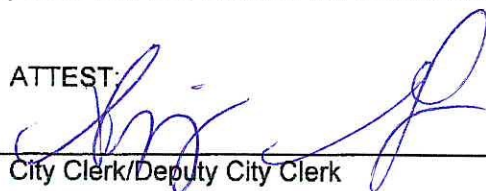
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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.

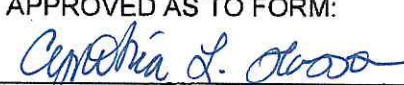
ATTEST:


 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

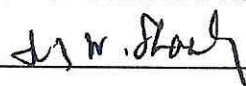
CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

Date: 5/24/18

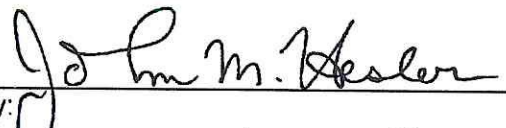
DAVID J. POWERS & ASSOCIATES, INC.

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

9.c

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

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

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

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

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:						
B	AUTOMOBILE LIABILITY						
	☒ ANY AUTO						
	☐ OWNED AUTOS ONLY						
	☒ HIRED AUTOS ONLY						
	☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY						
A	☒ UMBRELLA LIAB						
	☒ EXCESS LIAB						
	☐ CLAIMS-MADE						
	DED ☒ RETENTION \$ 0						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					
	If yes, describe under DESCRIPTION OF OPERATIONS below						
D	PROFESSIONAL LIABILITY						

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

Leticia Truino

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 _____

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.



CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: March 18, 2020

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

DISCUSS RESPONSE TO THE COUNTY OF SANTA CLARA'S ORDERS REGARDING COVID-19

RECOMMENDATION(S)

Provide direction to staff.

LINKS/ATTACHMENTS:

1. Santa Clara County Public Health Order (weblink)

Item # 09

AGENDA DATE: 03/18/2020
SUPPLEMENT # 1

From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: comment MH CC 3/18 #9 local emergency and budget
Date: Wednesday, March 18, 2020 7:26:51 PM

What are your plans for developing the next 2-year budget?
Will you go forward with approving in May even if there has
been little or no public input?
Doug Muirhead, Morgan Hill

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 18, 2020 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

OPEN AND PUBLIC MEETINGS DURING THE COVID-19 VIRUS EMERGENCY

The Brown Act, Government Code Section 54953, contains special requirements that apply when members of a legislative body participate in a public meeting by telephone. Certain of these requirements have been suspended by Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020 to mitigate the spread of the coronavirus known as COVID-19.

In particular, the Executive Order suspends the provisions of the Brown Act that require noticing and posting of agendas at each location where a member will be participating telephonically, as well as provisions that require physical presence of members for purposes of a quorum or to hold a meeting. Remote participants do not need to allow public access or comment at remote locations. The Order requires that the agency notice at least one publicly accessible location where members of the public have the right to observe and offer comment at the meeting, consistent with other provisions of the Brown Act.

The following members of the Morgan Hill City Council are listed to permit them to appear telephonically, if necessary, at the City Council Meeting on March 18, 2020: Mayor Constantine; Mayor Pro Tem Martinez Beltran and Council Members Carr, McKay, and Spring.

Public Participation:

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed in the following ways:

Members of the public may physically attend, observe, and provide public comment at the meeting at the Morgan Hill City Council Chamber. However, no one who is sick or showing symptoms of COVID-19 infection will be allowed to attend the meeting. Individuals who are at higher risk from infection should also avoid gatherings, including public meetings.

Attendees are expected to comply with directions from City staff with regard to seating arrangements and other social distancing measures pursuant to Santa Clara Public Health Officers Coronavirus Directives <<https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Documents/03-13-20-Health->

Officer-Order.pdf>.

The City Council meeting will be live-streamed on Channel 17 and on the City's website at: <http://morganhillca.igmp2.com/Citizens/VideoScreen.aspx?EncoderID=1002&MediaType=Channel> and via Facebook live: <https://www.facebook.com/morganhillengage/>

Public comment will be accepted via the chat feature through Facebook live and/or by email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>> during the meeting, prior to the close of public comment on an item, and read into the record during public comment.

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

PROCLAMATIONS

Proclaiming the month of March as American Red Cross Month

Proclaiming the month of March as Women's History Month

Proclaiming March 31, 2020 as Cesar Chavez Day

PRESENTATIONS

YAC PRESENTATION DEVELOPMENTAL ASSET #3- OTHER ADULT RELATIONSHIPS

CITY COUNCIL REPORTS

Mayor Constantine

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes.

Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE MONTEREY - CITY VENTURES: AFFORDABLE HOUSING PARKING CONCESSION

Recommendation:

Adopt resolution approving the request for the affordable housing parking concession.

2. APPROVE AGREEMENT WITH ASSET PROTECTION PRIVATE SECURITY, INC. FOR SECURITY SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer a two-year agreement with Asset Protection Private Security, Inc in the amount of \$82,000 for security services.

3. APPROVE MEMORANDUM OF UNDERSTANDING FOR 2019 EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG) WITH THE COUNTY OF SANTA CLARA

Recommendation:

1. Approve and authorize the City Manager to execute and administer a Memorandum of Understanding with The County of Santa Clara for the 2019 Emergency Management Performance Grant; and
2. Adopt resolution amending the City's Fiscal Year 2019-20 adopted budget to recognize the grant revenue of \$14,400 and appropriate the same as expenditure within the General Fund (010).

4. APPROVE SECOND AMENDMENT TO AGREEMENT WITH SECURE SOLUTIONS INC.

Recommendation:

Approve and authorize the City Manager to execute and administer the Second Amendment to the Agreement with Secure Solutions Inc. for a not to exceed amount of \$85,000 to conduct hiring background investigations of police personnel.

5. APPROVE CITY SPONSORSHIP OF PHILANTHROPY NIGHT, INDIA INDEPENDENCE DAY FESTIVAL, AND FUTURE WOMEN LEADERS CONFERENCE EVENTS AT THE COMMUNITY AND CULTURAL CENTER

Recommendation:

1. Authorize the City Manager to waive facility rental fees of \$3,000 for Morgan Hill Community Foundation's November 2020 Philanthropy Night Celebration;
2. Authorize the City Manager to waive facility rental fees of \$615 for Indian Association of South Santa Clara County's August 2020 India Independence Day Festival and flag raising ceremony; and
3. Authorize the City Manager to waive facility rental fees of \$3,000 for American Association of University Women's April 2021 Future Women Leaders Conference.

6. AWARD MORGAN HILL INCLUSIVE PLAYGROUND/MAGICAL BRIDGE PROJECT

Recommendation:

1. Adopt resolution to appropriate an additional \$701,079 in the Park Impact Fund (301) for the Morgan Hill Inclusive Playground/Magical Bridge Project;
2. Approve the Morgan Hill Inclusive Playground/Magical Bridge Project Plans and Specifications;
3. Award contract to CRW Industries, Inc. for the Morgan Hill Inclusive Playground/Magical Bridge Project in the amount of \$5,562,090;
4. Authorize expenditure of construction contingency funds not to exceed \$556,209; and
5. Authorize the City Manager to execute and administer the construction contract with CRW Industries, Inc.

7. 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.

8. APPROVE THE MARCH 4, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. APPROVE 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.

Estimated Time: 15 Minutes

10. DISCUSS RESPONSE TO THE COUNTY OF SANTA CLARA'S ORDERS REGARDING COVID-19

Recommendation:

Provide direction to staff.

Estimated Time: 30 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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Manager

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (§54957)

Title: City Attorney

RECONVENE

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





March

Developmental Asset #3

Other Adult Relationships

Young person receives support from three or more non-parent adults.

How do non-parent adults directly affect youth?



- o Other adults will encourage youth to stand up for themselves and their interests.
- o Other adults support youth through familial struggles.
- o Other adults will guide youth in ways that parents cannot.
- o Youth can recognize their own leadership style through observing other adults.



March

Complementary Asset #10

Safety

Young person feels safe at home,
school, and in the neighborhood

The Importance of Trusted Adults to a Community's Youth

- o Youth understand that they have a support system.
- o Youth will have role models to look up to.
- o Youth feel as though they are not alone.
- o Adults can impress upon youth their beneficial characteristics.
- o Youth will have a different perspective on life experiences.
- o Youth will be able to get advice from people other than their parents.



How this relates to our community:

Programs with adult leaders:

- o Future Women's Leaders Conference
- o Chill Out
- o Boy and Girl Scouts
- o YAC & YLMH
- o Lana's Dance Studio



Individuals within our community:

- o Teachers
- o Coaches
- o Teen Center Staff
- o Recreation Leaders
- o YAC Advisor
- o Club/Troop Leaders



What differences have you noticed between being a role model and those being mentored?

How have mentors impacted you, and do you still have a mentor?

