



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, April 15, 2020 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC MEETINGS DURING THE COVID-19 VIRUS EMERGENCY

Public Participation:

In accordance with Executive Orders N-25-20, N-29-20, and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. The Order will be addressed in the following ways:

Members of the public may not physically attend meetings at the Morgan Hill City Council Chamber.

The City Council meeting will be live-streamed on Channel 17 and on the City's website. Members of the public may participate in the meeting remotely through an electronic meeting in the following ways; by either joining the electronic meeting at <https://bit.ly/0415CityCouncilMeeting> and enter ID: 512 830 012 or by calling in (669) 900-9128 enter Meeting ID: 512 830 012#.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

CONTINUED PUBLIC HEARING

The item **Environmental Assessment application EA2019-0017 and Improvement Agreement: Cochrane-Monument Land Company (TechCon Project)** that was publicly noticed for consideration by the City Council at this meeting has been continued to a date certain of April 22, 2020.

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

Minutes Clerk Angie Gonzalez

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Minutes Clerk Angie Gonzalez

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

RECOGNITIONS

Recognizing and honoring Dolores Huerta

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. FEBRUARY 2020 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

2. ADOPT RESOLUTION APPROVING FY2020-21 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

Recommendation:

Adopt resolution approving a list of street rehabilitation projects to be funded by SB 1, The Road Repair and Accountability Act of 2017.

3. APPROVE AGREEMENTS FOR ON-CALL GENERAL CONTRACTORS

Recommendation:

1. Award two-year On-Call General Contractor Services contracts to the following general contractors in the amount of \$200,000: DRP Builders, Inc., Weston Construction, Inc., Valenti Builders, Inc., Castlewood Construction Company, Inc. and Tucker Construction, Inc.; and
2. Authorize the City Manager to execute and administer the On-Call General Contractor Services contracts with DRP Builders, Inc., Weston Construction, Inc., Valenti Builders, Inc., Castlewood Construction Company, Inc. and Tucker Construction Inc.

4. APPROVE FIRST AMENDMENT TO GENERATOR MAINTENANCE SERVICES AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute and administer an amendment to increase the not to exceed amount by \$25,000 for the current service maintenance agreement with Got Power, Inc. dba CD & Power for a total contract amount of \$144,475 for generator maintenance and repair services.

5. APPROVE THE APRIL 1, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARINGS

6. ADOPT HOUSING CRISIS ACT OF 2019: SB 330 IMPLEMENTATION ORDINANCE

Recommendation:

1. Open/close the public hearing;
2. Waive the first and second reading of the ordinance Implementing SB 330, Suspending Certain Growth Management Provisions of Residential Development Control System (RDSCS) until January 1, 2025; and
3. Introduce ordinance.

Estimated Time: 15 Minutes

7. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2020

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2020.

Estimated Time: 10 Minutes

OTHER BUSINESS

8. APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS AND 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 and Associates, Inc. for the not to exceed amount of \$219,000 for preparation of the Annexation Environmental Impact Report.

Estimated Time: 15 Minutes

9. APPROVE CONTRACT WITH DAVID J. POWERS AND ASSOCIATES FOR ASSISTANCE IN REVIEWING THE CALIFORNIA HIGH SPEED RAIL AUTHORITY DRAFT ENVIRONMENTAL IMPACT REPORT AND INITIAL STUDY (EIR/EIS)

Recommendation:

Approve and authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers and Associates for the not to exceed amount of \$104,772 to review and provide technical support services for the Draft Environmental Impact Report (EIR) and Initial Study (EIS) for the San Jose to Merced segment of High Speed Rail through Morgan Hill.

Estimated Time: 15 Minutes

10. COVID-19 FOLLOW-UP

Recommendation:

Discuss whether to consider moving forward with any of the following:

1. Local rent eviction ordinance;
2. Local rent control ordinance;
3. General Fund support of businesses; and
4. Creation of an economic development taskforce.

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.

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email cityclerk@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

City Council Ongoing Priorities

- Enhancing Public Safety
- Protecting the Environment and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community History
- Enhancing Diversity and Inclusiveness
- Advancing Regional Initiatives

2020-2021 Strategic Priorities

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



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

FEBRUARY 2020 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging
Financial Sustainability

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the Fiscal Year 2019-20 eight months ended February 29, 2020. Overall, the City received 58% of the budgeted revenues or \$77.2 million. Expenditures, including encumbrances totaled \$95.3 million or 49% of the budget. General Fund revenues for the eight months totaled \$23.7 million or 55% of the budget, an increase of approximately \$0.2 million or 1% from prior year to date led by an increase in property tax. General fund expenditures, including encumbrances, amounted to \$29.8 million through February 2020.

At this time, the exact impacts of COVID-19 for the remainder of the fiscal year are difficult to quantify due to the evolving scope and unknown duration of the pandemic. Businesses, large and small, have had to close or significantly reduce service. Many of these businesses provide sales tax or transient occupancy tax (TOT) that support the City's General Fund which supports City services. Additionally, the City too had to discontinue recreational programs, which will also impact the City's revenues. Recreation services revenue, the City's third largest revenue source of the general fund, is expected to be one of the hardest hit categories due to facilities closure.

While staff is still estimating the financial impact of the shelter-in-place order on the City's General Fund, the City can expect its finances to incur a significant hit as hotels and retail stores, automotive sales and gas sales are all going to be greatly affected. According to HdL, the City's sales tax consultant, excluding sales tax rebates, the City will collect approximately \$8.9 million in sales tax revenue for the current year or approximately \$1.5 million less than the budget. This projected number does not include impacts due to the recent Governor's Executive Order that 1) will allow businesses generating less than \$1,000,000 in annual sales to delay filing for 90 days (until July 31,

2020) and 2) allow businesses with up to \$50,000 in total sales and use tax liability to defer payment up to 12 months (until July 31, 2021).

Due to facilities closure and discontinuation of recreational programs during this time, recreation services revenue is expected to end the year about \$1.0 million short of the budget. As for City's hotel tax or TOT, based on the current occupancy estimates and the projection of occupancy rates to remain 20% or below for months to come, the City's hotel tax collection will be drastically reduced. It is estimated that current year hotel tax revenue will come in at about \$2.2 million versus \$3.1 million budgeted.

While the pandemic is having an immediate negative impact to the aforementioned revenues, property tax typically lags behind in the effects of the downturn. The City is still expecting current year property tax revenue to come in higher than budget. However, the impact to the property tax for the next few years will be dependent on the duration of the pandemic.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports to inform City officials, the Council, the community, and various lenders and stakeholders about the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

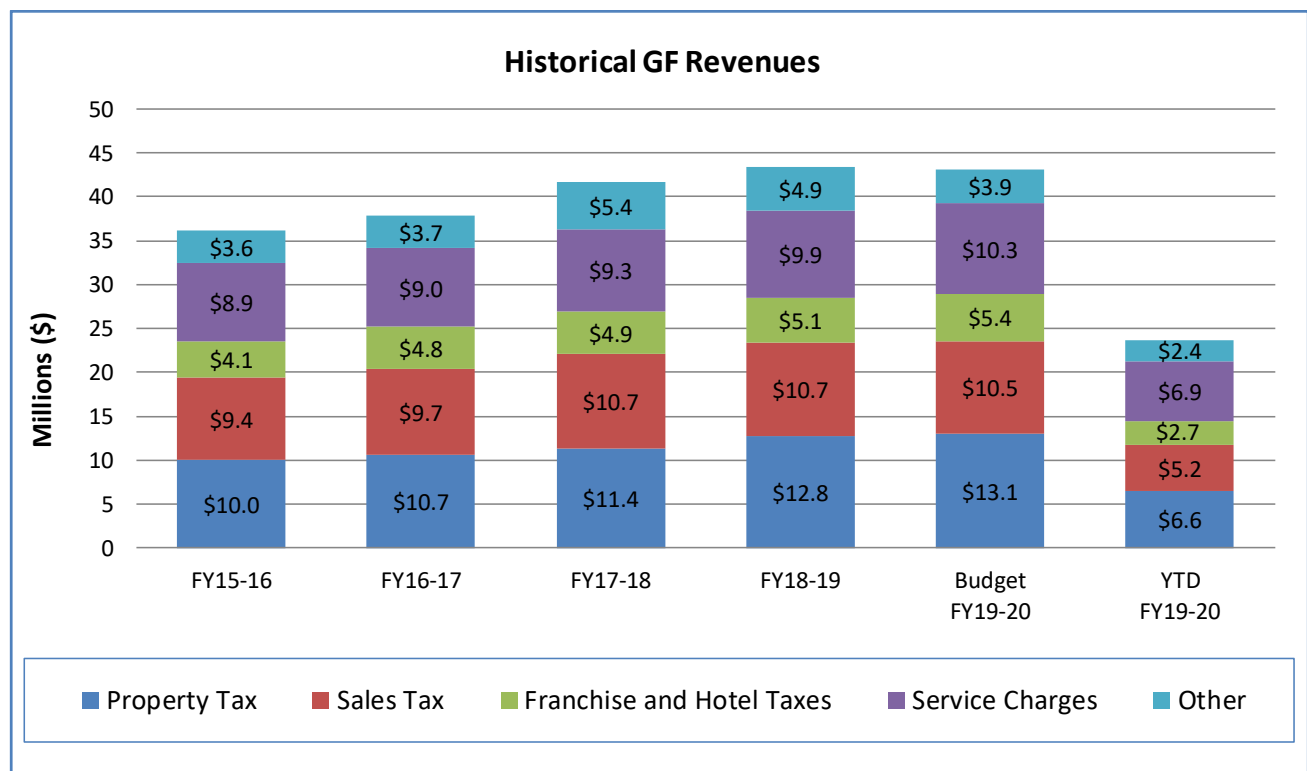
1. February 2020 Financial Statement Analysis
2. February 2020 Financial and Investment Report



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED FEBRUARY 2020 – 67% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of February totaled \$23.7 million, or 55% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the County's most recent estimate projected Morgan Hill property tax revenue, excluding the property transfer tax, at \$14.1 million for the fiscal year 2019-20. The current projection is approximately \$1 million more than the revised budget, partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution and former Redevelopment Agency (RDA) residual apportionment. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Former RDA residual apportionment is the residual amount paid to the taxing entities after sufficient funds had been set aside to pay for former RDA enforceable obligations. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 30% of the approximately \$43.2 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The chart below shows historical General Fund revenues by major revenue category from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of February 29, 2020.

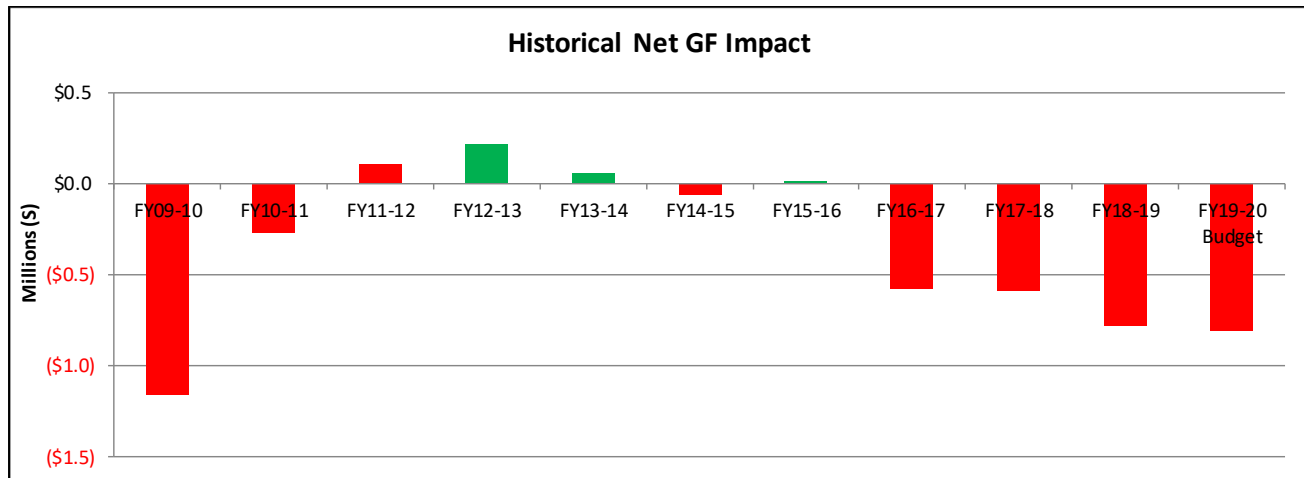


General Fund expenditures and encumbrances as of February 29, 2020 totaled \$29.8 million, of which approximately \$1.7 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED FEBRUARY 2020 – 67% OF YEAR COMPLETE

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.2 million through the month of February. Without the carry-over encumbrances, through the month of February operations resulted in a negative impact to the general fund of approximately \$106,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through February totaled \$3.1 million. Expenditures, including encumbrances, totaled \$4.3 million. Without the outstanding encumbrances, however, expenditures through the month of January amounted to \$3.7 million. The COVID-19 pandemic is expected to have a material and immediate impact to development services related revenue. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$0.7 million, however, it is now expected to run out of cash before the fiscal year end and requires a short term loan from other sources. Time is of the essence in addressing the fund's structural deficit. Staff intends to engage a consultant to conduct a comprehensive fee study once the shelter in place order is lifted.
- **Debt Service Funds** – Expenditures through the month of February totaled \$0.5 million. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED FEBRUARY 2020 – 67% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through the month of February totaled \$7.3 million. Expenditures and outstanding encumbrances totaled \$7.5 million or approximately 62% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of February 29, 2020.

(amount in millions)	FY15-16	FY16-17	FY17-18	FY18-19	Budget FY19-20	YTD FY19-20
Revenues	10.2	9.7	10.3	11.4	12.1	7.3
Expenditures	12.0	9.8	10.8	11.4	12.1	7.5
Operating Margin	(1.8)	(0.1)	(0.5)	-	-	(0.2)
Operating Margin without Encumbrances	(1.8)	(0.0)	(0.3)	0.4	-	0.4

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of February totaled \$9.2 million. Water Operations expenditures, including outstanding encumbrances, totaled \$10.5 million for the year. Without the encumbrances, however, the expenditures amounted to \$9.2 million. The table below shows Water Operations revenues and expenditures from FY15-16 through FY18-19 Actual, FY19-20 Budget, and YTD as of February 29, 2020.

(amount in millions)	FY15-16	FY16-17	FY17-18	FY18-19	Budget FY19-20	YTD FY19-20
Revenues	8.5	10.9	13.0	14.2	14.8	9.2
Expenditures	9.7	11.2	12.1	14.3	15.2	10.5
Operating Margin	(1.2)	(0.3)	0.9	(0.1)	(0.4)	(1.3)
Operating Margin without Encumbrances	(1.2)	(0.1)	1.4	0.8	(0.4)	0.1

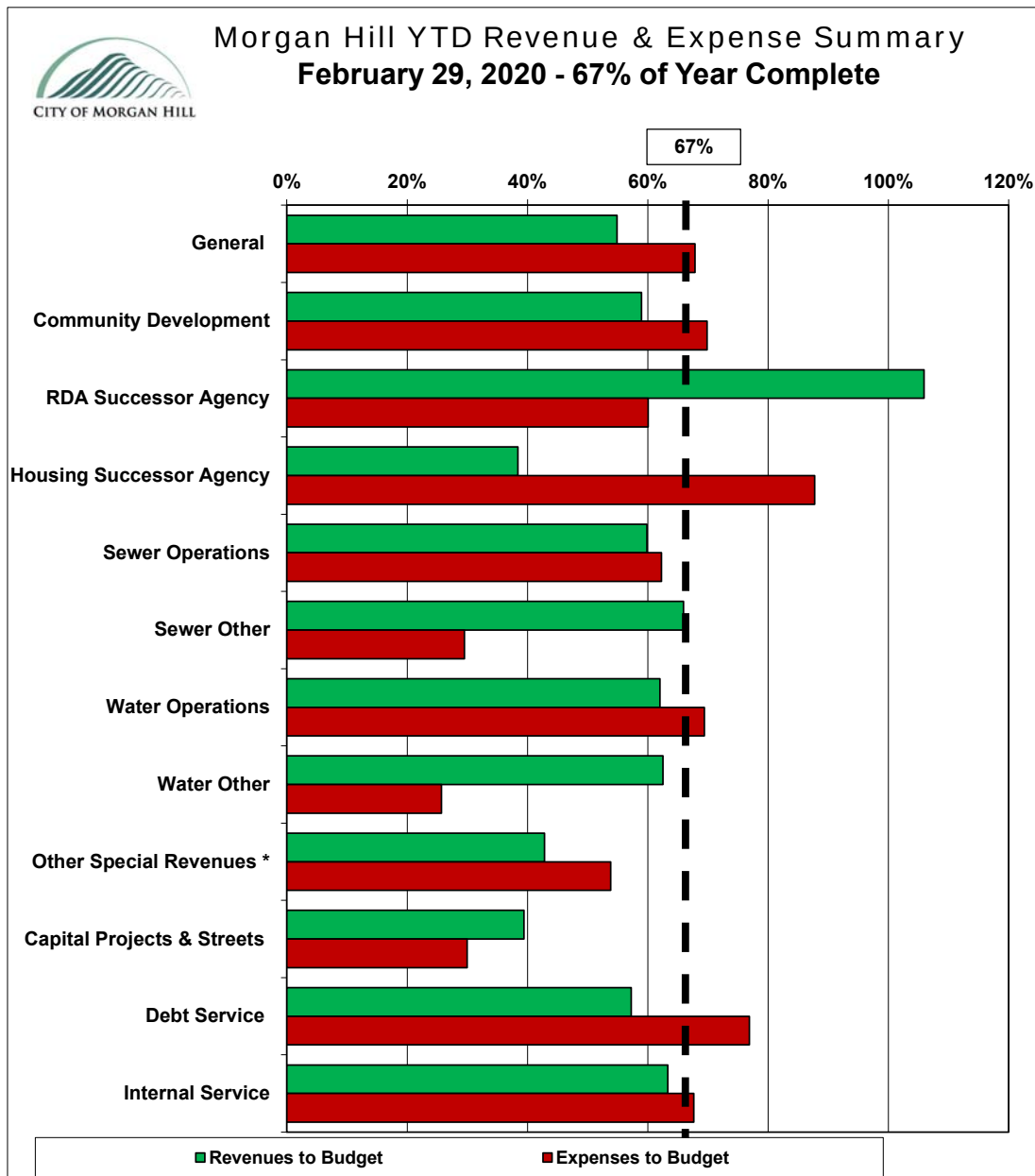
- **Investments** – Two securities were called during the month of February 2020. Total interest earnings received on investments were \$61,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
February 29, 2020 - 67% of Year Complete



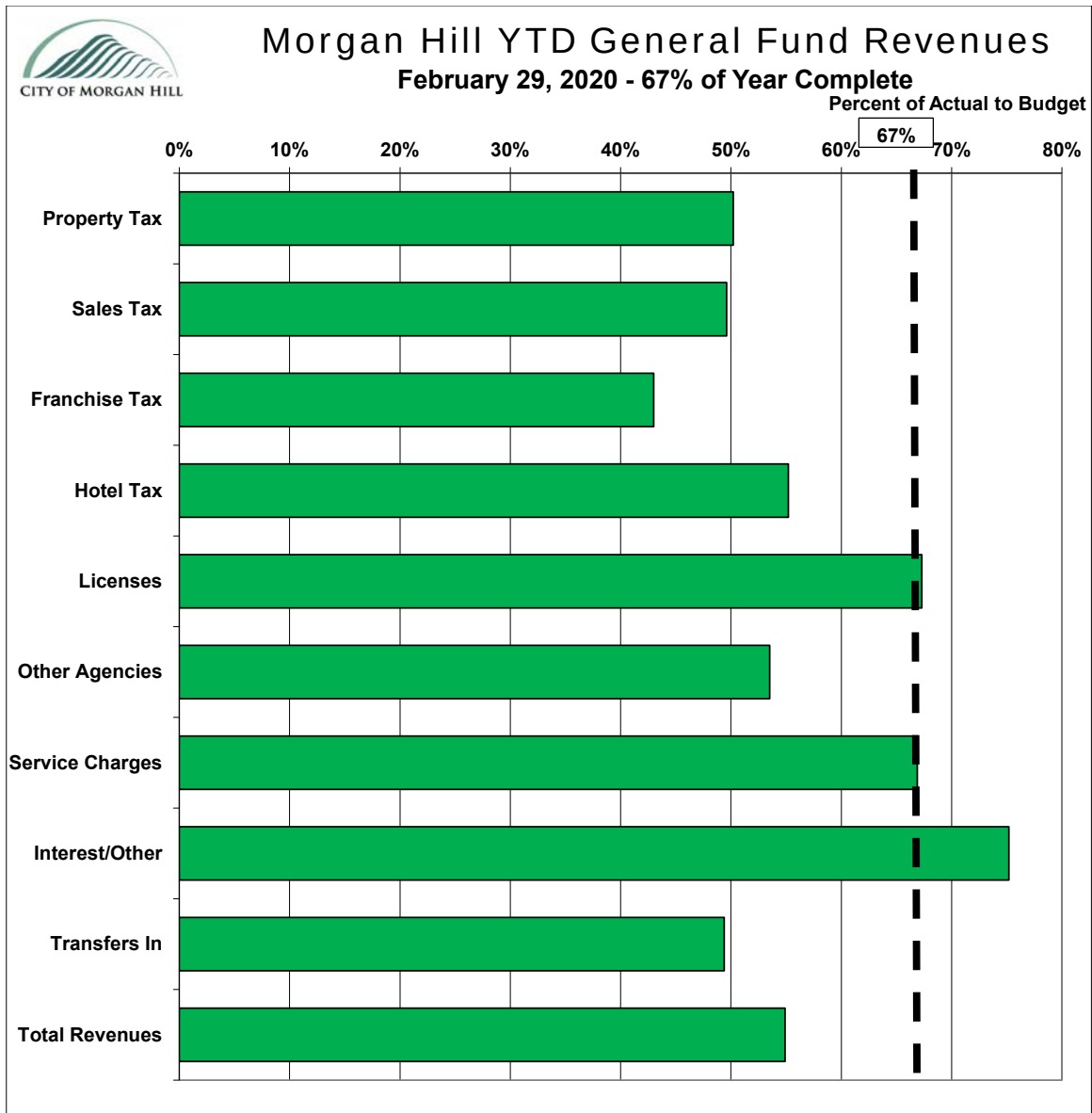
CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION

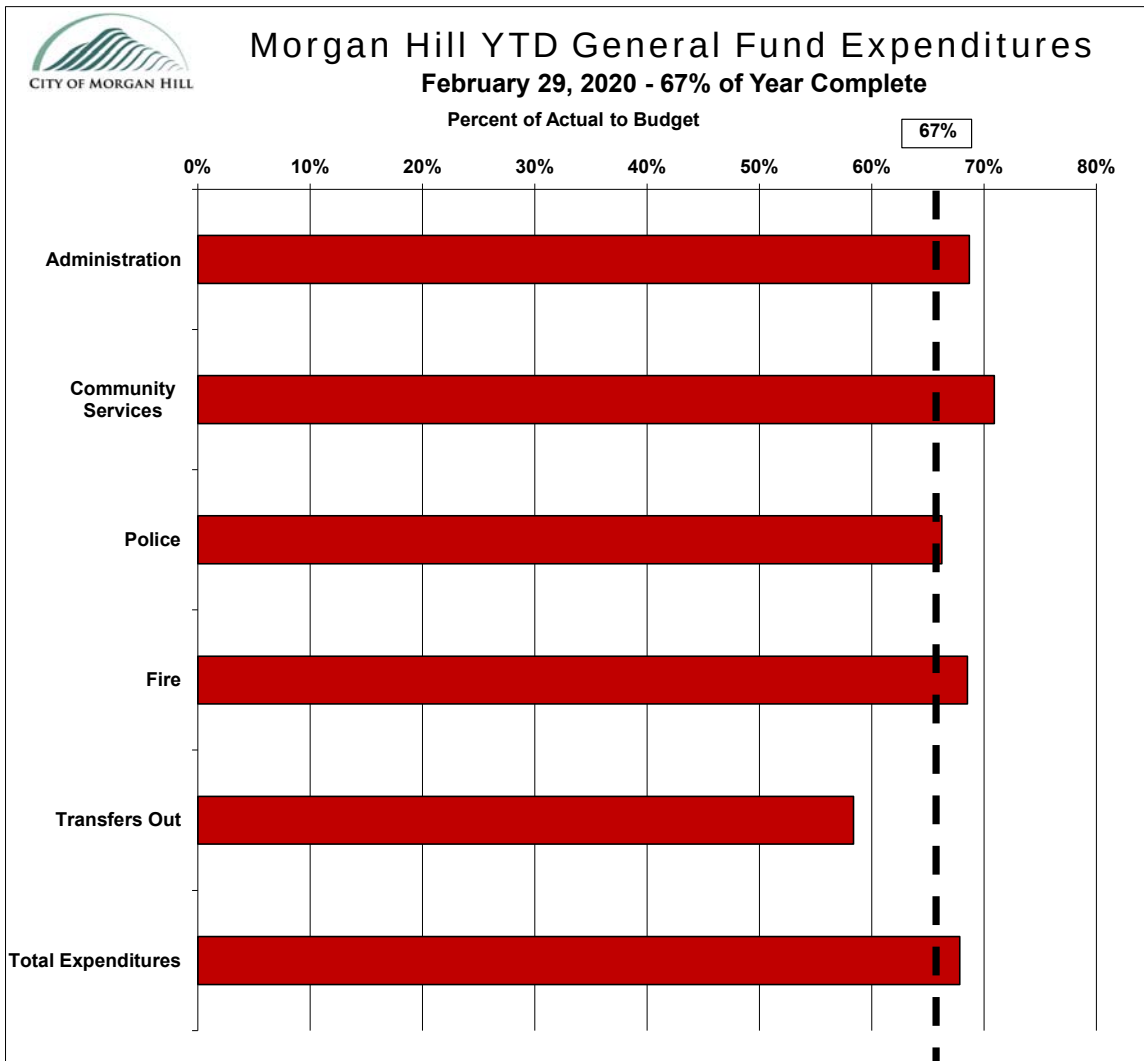


FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 23,695,617	55%	\$ 29,849,949	68%
Community Development	3,103,076	59%	4,250,080	70%
RDA Successor Agency	7,348,767	106%	4,188,417	60%
Housing Successor Agency	212,712	38%	821,145	88%
Sewer Operations	7,254,265	60%	7,526,491	62%
Sewer Other	5,248,502	66%	7,008,880	30%
Water Operations	9,165,674	62%	10,544,790	69%
Water Other	3,345,770	63%	1,544,585	26%
Other Special Revenues *	1,653,802	43%	2,184,235	54%
Capital Projects & Streets	8,241,960	39%	19,113,041	30%
Debt Service	388,159	57%	532,266	77%
Internal Service	7,583,154	63%	7,714,582	68%
TOTAL FOR ALL FUNDS	\$ 77,241,458	58%	\$ 95,278,461	49%

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



REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$ 13,082,377	\$ 6,565,622	50%	\$ 6,218,862	6%
Sales Tax	10,476,000	5,191,963	50%	5,758,159	-10%
Franchise Tax	2,319,566	997,324	43%	955,035	4%
Hotel Tax	3,080,880	1,699,507	55%	1,660,732	2%
Licenses	206,940	139,246	67%	199,072	-30%
Other Agencies	403,389	215,867	54%	177,131	22%
Service Charges	10,267,724	6,867,066	67%	6,467,257	6%
Interest/Other	1,471,324	1,106,822	75%	1,089,035	2%
Transfers In	1,847,658	912,201	49%	939,774	-3%
TOTAL REVENUES	\$ 43,155,858	\$ 23,695,617	55%	\$ 23,465,056	1%



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,835,112	\$ 3,320,896	69%	\$ 3,275,611	1%
Community Services	12,689,427	8,998,459	71%	8,156,480	10%
Police	17,372,961	11,509,839	66%	10,612,785	8%
Fire	6,961,396	4,770,092	69%	4,612,727	3%
Transfers Out	2,142,463	1,250,664	58%	1,214,024	3%
TOTAL EXPENDITURES	\$ 44,001,359	\$ 29,849,949	68%	\$ 27,871,627	7%

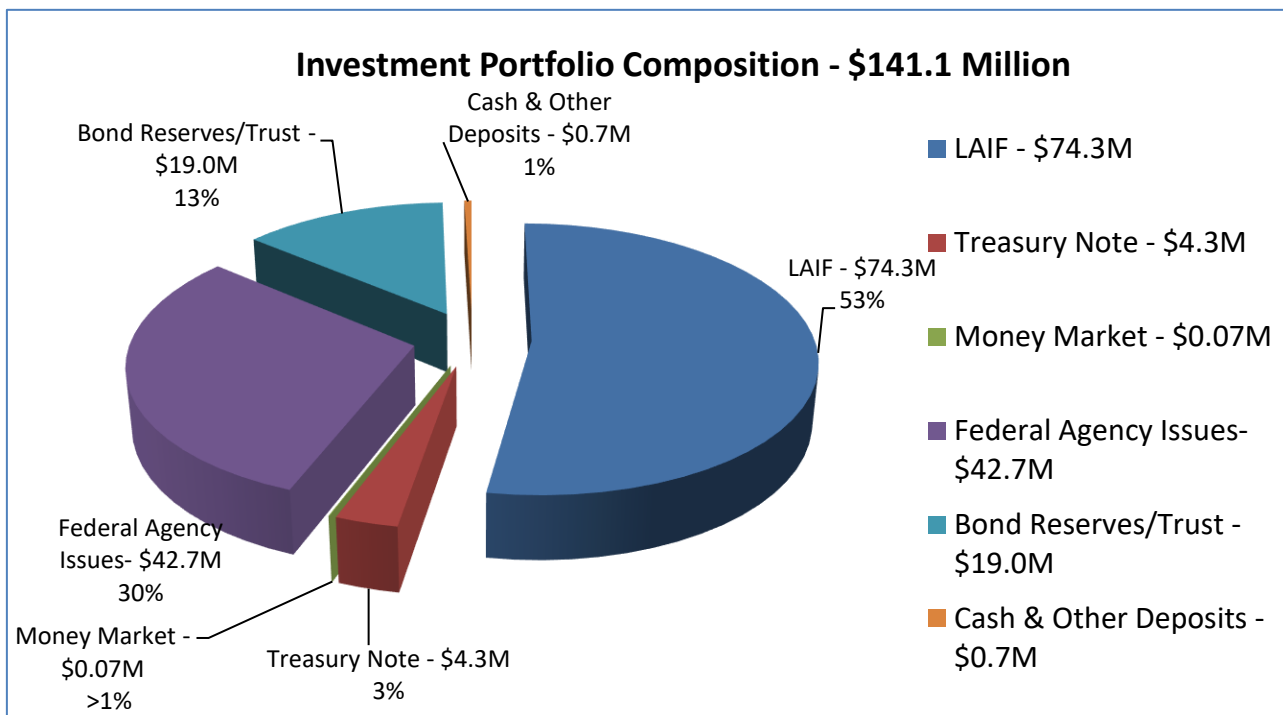


**City of Morgan Hill
Recreation Report - Fiscal Year 2019-20
For the Month and Eight Months Ended February 29, 2020
67% of Year Complete**

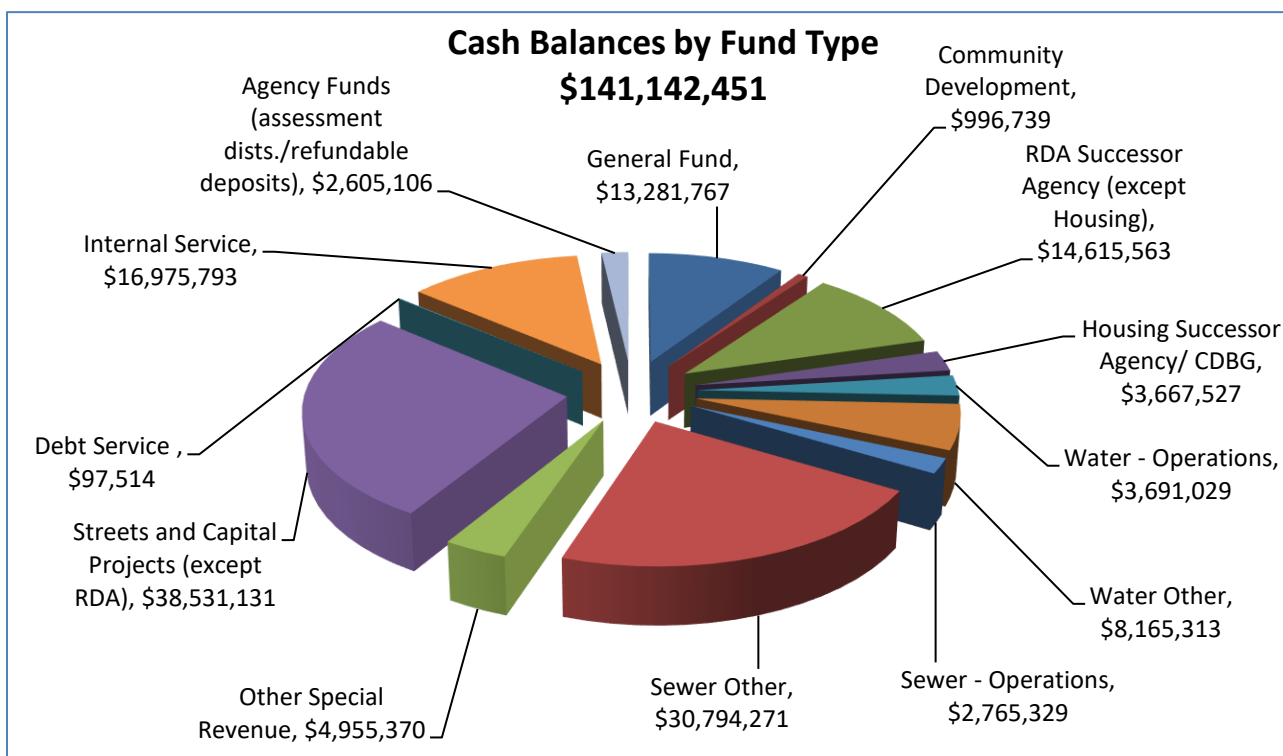
	<u>Budget</u>	<u>February 2020</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,426,631	\$ 476,938	\$ 4,244,741	
Facility Rentals	915,330	63,579	672,549	
Community Services	149,705	7,227	72,361	
Transfers in	75,000	6,250	50,000	
Total Revenues	<u>\$ 7,566,666</u>	<u>\$ 553,994</u>	<u>\$ 5,039,652</u>	67%
Less: Expenditures				
Membership & Program Services	\$ 6,371,297	\$ 338,625	\$ 3,853,476	
Facility Rentals	1,356,318	102,309	889,801	
Community Services	648,407	49,528	402,499	
Total Expenditures	<u>\$ 8,376,023</u>	<u>\$ 490,460</u>	<u>\$ 5,145,776</u>	61%
Net Impact without encumbrances	<u>\$ (809,357)</u>	<u>\$ 63,534</u>	<u>\$ (106,124)</u>	
Encumbrances	-	-	1,065,519	
Net Impact with encumbrances	<u>\$ (809,357)</u>	<u>\$ 63,534</u>	<u>\$ (1,171,643)</u>	

City of Morgan Hill Monthly Investment Report - February 29, 2020

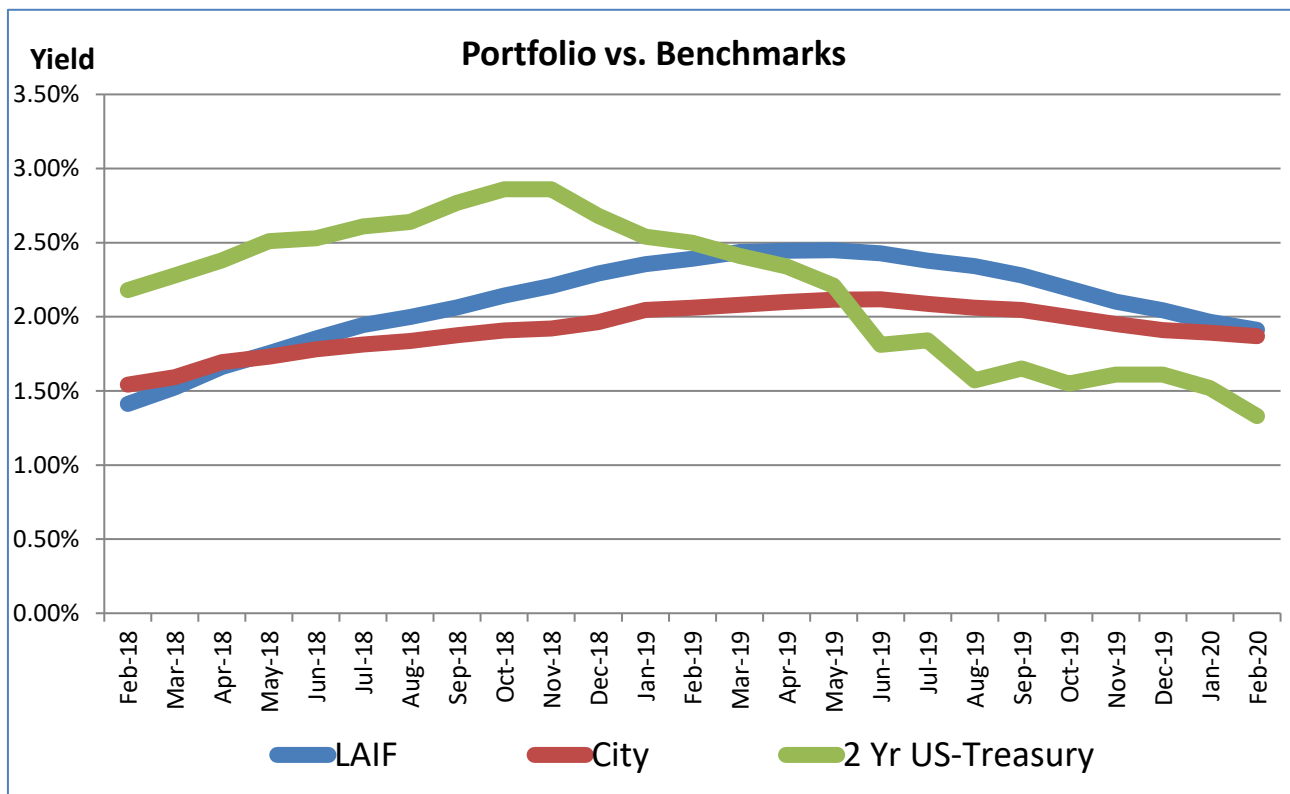
The following are the snapshots of City's investment portfolio as of February 29, 2020. The first chart shows the portfolio composition by investment type:



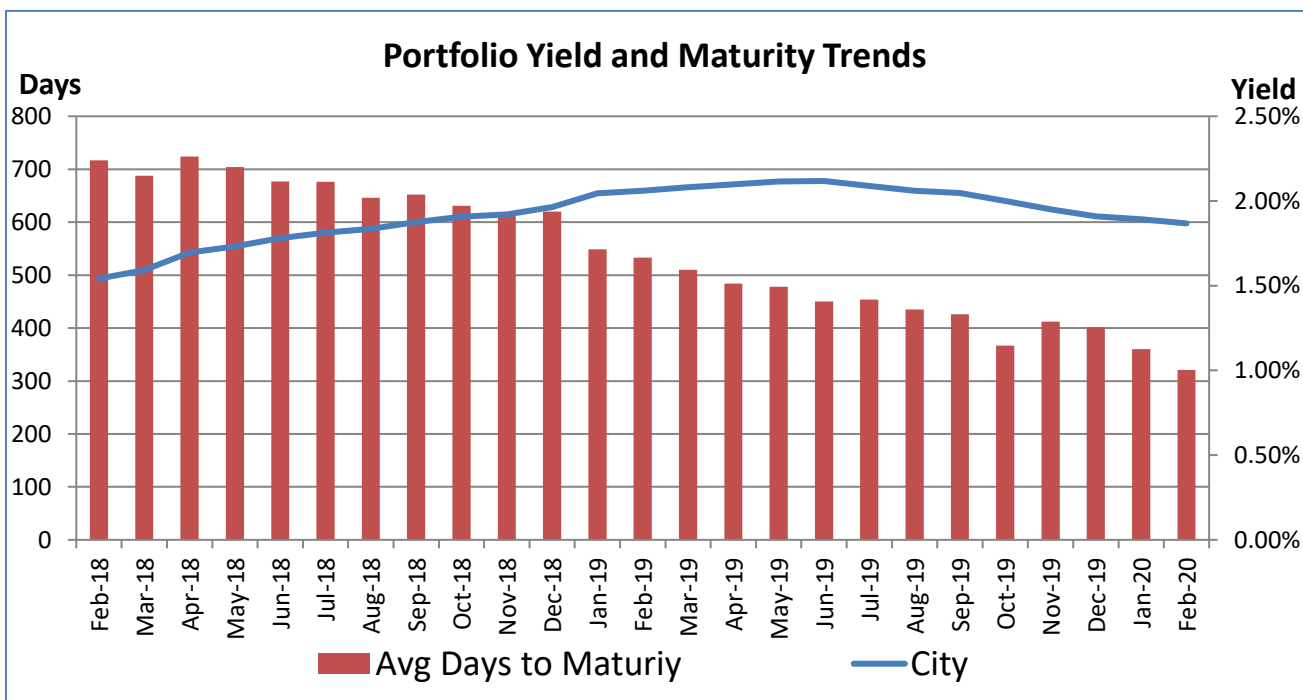
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of February 29, 2020

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 74,340,762	52.67%	\$ 74,472,367	1.91%		
City Managed							
Fed Home Loan Bank	6/30/2016	4,000,000	2.83%	4,000,080	1.50%	3/12/2020	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.83%	4,008,920	1.40%	8/25/2020	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.42%	2,000,800	1.65%	3/29/2020	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.83%	4,001,640	1.60%	3/29/2020	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.83%	4,003,080	1.60%	10/27/2020	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.83%	4,003,120	1.55%	10/28/2020	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.42%	2,001,620	1.65%	10/28/2020	10/28/2021
Fed Home Loan Mortgage	11/15/2016	4,000,000	2.83%	4,000,080	1.55%	3/12/2020	11/15/2021
Fed Home Loan Mortgage	11/23/2016	4,000,000	2.83%	4,004,640	1.63%	11/23/2020	11/23/2021
Treasury Note	4/30/2018	4,341,163	3.28%	4,584,195	2.73%	3/31/2023	3/31/2023
Fed Home Loan Mortgage	7/10/2019	3,000,000	2.13%	3,008,850	2.15%	7/2/2020	7/2/2024
Fed Farm Credit BKS	11/5/2019	3,000,000	2.13%	3,013,980	2.00%	11/5/2020	11/5/2024
Fed Farm Credit BKS	12/13/2019	2,998,563	2.12%	3,017,550	1.90%	11/27/2020	11/27/2024
Fed Home Loan Bank	9/26/2018	749,726	0.53%	750,525	2.80%	3/30/2020	3/30/2020
Fed Home Loan Mortgage	1/18/2019	999,870	0.71%	1,001,420	2.59%	4/23/2020	4/23/2020
Sub Total/Average		\$ 47,089,321	33.56%	\$ 47,400,500	1.76%		
Money Market		\$ 70,043	0.05%	\$ 70,043	1.46%		
Total City Managed/Average		\$ 121,500,125	86.28%	\$ 121,942,910	1.85%		
Bond Reserve Accounts - Held By Trustees		\$ 15,579,425	11.04%	\$ 15,579,425			
Cash/Deposits		\$ 675,497	0.48%	\$ 675,497			
PARS Trust		\$ 3,387,404	2.40%	\$ 3,814,658			
GRAND TOTAL/AVERAGE		\$ 141,142,451	100%	\$ 142,012,490			

Attachment: February 2020 Financial and Investment Report [Revision 1] (2714 : Accept February 2020 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF FEBRUARY 29, 2020
FOR THE FISCAL YEAR OF 2019-20

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.91%	\$ 71,398,555	50.59%	\$ 71,524,952
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.91%	2,942,206	2.08%	2,947,415
Federal Issues	All Funds Pooled	1.67%	42,748,158	30.29%	42,816,305
US Treasury Notes	All Funds Pooled	2.73%	4,341,163	3.08%	4,584,195
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.46%	70,043	0.05%	70,043
	SUBTOTAL		\$ 121,500,125	86.08%	\$ 121,942,910
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	1.23%	200	0.00%	200
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.23%	254	0.00%	254
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.46%	14,414,199	10.21%	14,414,199
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.23%	585,545	0.41%	585,545
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.23%	579,227	0.41%	579,227
	SUBTOTAL		15,579,425	11.04%	15,579,425
Other Cash/Deposits					
General Checking	All Funds		638,385	0.45%	638,385
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			2,187,404	1.55%	2,466,246
PARS - PENSION Trust			1,200,000	0.85%	1,348,412
	SUBTOTAL		4,062,901	2.88%	4,490,155
Total Cash and Investments			\$ 141,142,451	100.00%	\$ 142,012,490

CASH ACTIVITY SUMMARY
FY 2019-20

Fund Type	07/1/19 Balance	Change in Cash Balance	2/29/2020 Balance
General Fund	\$ 16,094,062	\$ (2,812,295)	\$ 13,281,767
Community Development	2,835,370	(1,838,630)	996,739
RDA Successor Agency (except Housing)	10,774,671	3,840,892	14,615,563
Housing Successor Agency/ CDBG	4,065,899	(398,372)	3,667,527
Water - Operations	2,862,753	828,276	3,691,029
Water Other	6,212,393	1,952,920	8,165,313
Sewer - Operations	1,677,931	1,087,397	2,765,329
Sewer Other	31,500,213	(705,942)	30,794,271
Other Special Revenue	5,130,146	(174,776)	4,955,370
Streets and Capital Projects (except RDA)	43,758,217	(5,227,086)	38,531,131
Debt Service	240,894	(143,381)	97,514
Internal Service	15,531,375	1,444,418	16,975,793
Agency Funds (assessment dists./refundable deposits)	4,307,504	(1,702,398)	2,605,106
Total	\$ 144,991,427	\$ (3,848,976)	\$ 141,142,451

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:

Gina Nazareno, Senior Accountant

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Eight Months Ended February 29, 2020
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 11,189,507	\$ 11,189,507	\$ 5,793,333	52%	\$ 5,367,378	\$ 425,955	8%
Property Tax - RPTTF Residual Distribution	1,573,610	1,573,610	673,465	43%	704,304	(30,839)	-4%
Property Tax - Supplemental Roll	319,260	319,260	98,824	31%	147,180	(48,355)	-33%
Sales Tax	10,091,000	10,091,000	5,008,565	50%	5,543,908	(535,343)	-10%
Public Safety Sales Tax	385,000	385,000	183,398	48%	214,251	(30,854)	-14%
Transient Occupancy Taxes	3,080,880	3,080,880	1,699,507	55%	1,660,732	38,775	2%
Franchise (Refuse, Cable, PG&E)	2,319,566	2,319,566	997,324	43%	955,035	42,289	4%
Property Transfer Tax	515,000	515,000	299,789	58%	318,034	(18,245)	-6%
TOTAL TAXES	29,473,823	29,473,823	14,754,204	50%	14,910,821	(156,617)	-1%
LICENSES/PERMITS							
Business License	202,000	202,000	133,364	66%	195,154	(61,790)	-32%
Other Permits	4,940	4,940	5,882	119%	3,918	1,964	50%
TOTAL LICENSES/PERMITS	206,940	206,940	139,246	67%	199,072	(59,826)	-30%
FINES AND PENALTIES							
Parking Enforcement	8,500	8,500	2,756	32%	5,309	(2,553)	-48%
Bails & Fines	73,645	73,645	32,244	44%	58,581	(26,336)	-45%
Administrative Citations	9,785	9,785	94,506	966%	1,156	93,350	8074%
TOTAL FINES AND PENALTIES	91,930	91,930	129,506	141%	65,046	64,460	99%
OTHER AGENCIES							
Motor Vehicle in-Lieu	24,652	24,652	36,203	147%	21,366	14,836	69%
Other Revenue - Other Agencies	403,389	403,389	215,867	54%	177,131	38,735	22%
TOTAL OTHER AGENCIES	428,041	428,041	252,070	59%	198,498	53,572	27%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,990	33,990	15,574	46%	27,845	(12,271)	-44%
Business License Application Review	36,000	36,000	26,548	74%	31,082	(4,534)	-15%
Membership Services & Rec Programs	6,426,631	6,426,631	4,244,741	66%	4,167,426	77,315	2%
Facility Rentals	915,330	915,330	672,549	73%	651,594	20,956	3%
Community Services	149,705	149,705	72,361	48%	77,692	(5,330)	-7%
General Administration Overhead	1,795,198	1,795,198	1,194,280	67%	1,137,408	56,872	5%
Other Charges Current Services	910,870	910,870	641,012	70%	374,210	266,802	71%
TOTAL CURRENT SERVICES	10,267,724	10,267,724	6,867,066	67%	6,467,257	399,809	6%
OTHER REVENUE							
Use of money/property	517,900	517,900	350,390	68%	280,410	69,980	25%
Other Revenues	311,842	321,842	290,934	90%	404,179	(113,245)	-28%
TOTAL OTHER REVENUE	829,742	839,742	641,325	76%	684,589	(43,265)	-6%
TRANSFERS IN							
One Time Transfer	180,000	180,000	119,992	67%	-	119,992	0%
Public Safety	100,000	100,000	92,415	92%	48,809	43,605	89%
Fire Impact	-	25,000	25,000	100%	-	25,000	0%
Streets	738,968	738,968	138,995	19%	358,460	(219,466)	-61%
Police Impact	25,000	25,000	16,664	67%	16,664	-	n/a
Sewer Operations	351,845	351,845	234,568	67%	232,920	1,648	1%
Water Operations	351,845	351,845	234,568	67%	232,920	1,648	1%
Park Development	75,000	75,000	50,000	67%	50,000	-	n/a
TOTAL TRANSFERS IN	1,822,658	1,847,658	912,201	49%	939,774	(27,573)	-3%
TOTAL GENERAL FUND	43,120,858	43,155,858	23,695,617	55%	23,465,056	230,561	1%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	738,968	738,968	431,531	58%	406,761	24,770	6%
Interest / Other Revenue/Other Charges	-	-	1,843	n/a	1,730	113	7%
202 STREET MAINTENANCE	738,968	738,968	433,374	59%	408,491	24,883	6%

Attachment: February 2020 Financial and Investment Report [Revision 1] (2714 : Accept February 2020 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Eight Months Ended February 29, 2020
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	135	135	1,040	770%	680	359	53%
Police Grant/SLEF/JAG	100,000	100,000	97,614	98%	90,413	7,201	8%
205 PUBLIC SAFETY TRUST	100,135	100,135	98,654	99%	91,093	7,561	8%
206 DEVELOPMENT SERVICES							
Building Fees	3,275,864	3,275,864	2,019,177	62%	1,847,852	171,325	9%
Planning Fees	1,476,912	1,476,912	889,293	60%	1,013,358	(124,066)	-12%
Engineering Fees	495,977	495,977	167,174	34%	319,238	(152,064)	-48%
Other Revenue/Current Charges	14,682	14,682	27,432	187%	34,175	(6,744)	-20%
206 DEVELOPMENT SERVICES	5,263,435	5,263,435	3,103,076	59%	3,214,624	(111,548)	-3%
207 LONG RANGE PLANNING	736,371	736,371	453,400	62%	465,849	(12,449)	-3%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,660	3,660	710	19%	646	65	10%
215 and 216 HCD BLOCK GRANT	3,660	3,660	710	19%	646	65	10%
225 ASSET SEIZURE	2,227	2,227	17,369	780%	32,697	(15,328)	-47%
229 LIGHTING AND LANDSCAPE	189,158	189,158	97,416	52%	99,329	(1,913)	-2%
230 COMMUNITY FACILITIES DISTRICT	44,504	44,504	24,774	56%	34,248	(9,473)	-28%
232 ENVIRONMENTAL PROGRAMS	409,843	409,843	290,421	71%	297,214	(6,793)	-2%
234 MOBILE HOME PARK RENT STAB.	873	873	6,262	717%	9,011	(2,749)	-31%
235 SENIOR HOUSING	4,462	4,462	2,552	57%	2,221	332	15%
236 HOUSING MITIGATION	2,336,690	2,336,690	645,868	28%	1,148,861	(502,993)	-44%
240 EMPLOYEE ASSISTANCE	29,256	29,256	13,624	47%	14,679	(1,055)	-7%
247 ENVIRONMENT REMEDIATION	2,824	2,824	2,751	97%	1,340	1,411	105%
250 COMH-SUCCESSOR AGENCY-MHRDA	6,935,750	6,935,750	7,348,767	106%	11,969,106	(4,620,339)	-39%
255 HOUSING SUCCESSOR AGENCY	553,622	553,622	212,712	38%	58,012	154,700	267%
TOTAL SPECIAL REVENUE FUNDS	17,351,779	17,351,779	12,751,731	73%	17,847,420	(5,095,689)	-29%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	2,647,562	2,677,562	855,932	32%	1,579,204	(723,272)	-46%
302 PARK MAINTENANCE	1,371,696	1,371,696	316,877	23%	629,419	(312,543)	-50%
303 LOCAL DRAINAGE	1,652,576	1,652,576	636,917	39%	499,370	137,547	28%
304 LOCAL DRAINAGE/NON AB1600	83,498	83,498	17,368	21%	120,303	(102,935)	-86%
306 AGRICULTURE & OPEN SPACE PRESERVATION	3,420,324	3,420,324	808,821	24%	1,979,530	(1,170,709)	-59%
308 STREET CIP	5,068,938	5,068,938	2,796,077	55%	2,037,713	758,364	37%
309 TRAFFIC IMPACT	1,283,196	1,283,196	847,261	66%	1,907,473	(1,060,212)	-56%
311 POLICE IMPACT	295,109	295,109	149,298	51%	234,614	(85,316)	-36%
313 FIRE IMPACT	469,220	469,220	89,587	19%	243,757	(154,170)	-63%
346 PUBLIC FACILITIES NON-AB1600	630,420	630,420	177,100	28%	135,009	42,090	31%
347 PUBLIC FACILITIES IMPACT	221,932	221,932	159,088	72%	166,776	(7,687)	-5%
348 LIBRARY	936,224	936,224	313,333	33%	636,779	(323,446)	-51%
350 UNDERGROUNDING	50,079	50,079	9,622	19%	141,445	(131,823)	-93%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	656,864	656,864	84,407	13%	33,187	51,220	154%
360 COMMUNITY/REC IMPACT FUND	1,359,693	1,359,693	546,899	40%	845,666	(298,767)	-35%
TOTAL CAPITAL PROJECTS FUNDS	20,147,331	20,177,331	7,808,586	39%	11,190,246	(3,381,660)	-30%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,874	301,874	200,945	67%	199,018	1,927	1%
441 POLICE FACILITY BOND	376,090	376,090	187,214	50%	187,365	(151)	0%
TOTAL DEBT SERVICE FUNDS	677,964	677,964	388,159	57%	386,383	1,776	0%



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Eight Months Ended February 29, 2020
67% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	11,746,083	11,746,083	6,513,141	55%	6,066,201	446,940	7%
Interest Income/Transfers	43,166	43,166	41,196	95%	20,004	21,192	106%
Other Revenue/Current Charges	328,660	328,660	699,928	213%	712,848	(12,920)	-2%
640 SEWER OPERATION	12,117,909	12,117,909	7,254,265	60%	6,799,053	455,212	7%
641 SEWER EXPANSION							
Interest Income	253,972	253,972	220,977	87%	174,623	46,354	27%
Development Impact Fee	4,801,041	4,801,041	3,016,627	63%	3,956,496	(939,869)	-24%
Transfers/Other	-	-	-	n/a	-	-	0%
641 SEWER EXPANSION	5,055,013	5,055,013	3,237,604	64%	4,131,119	(893,515)	-22%
642 SEWER RATE STABILIZATION	52,262	52,262	29,315	56%	25,514	3,801	15%
643 SEWER-CAPITAL PROJECT	2,853,531	2,853,531	1,981,583	69%	1,927,648	53,935	3%
TOTAL SEWER FUNDS	20,078,715	20,078,715	12,502,767	62%	12,883,335	(380,567)	-3%
650 WATER OPERATION							
Water Sales	13,400,000	13,400,000	8,209,425	61%	7,577,491	631,934	8%
Meter Install & Service	125,500	125,500	11,928	10%	98,647	(86,719)	-88%
Transfers-In / Interest Income	478,039	478,039	324,323	68%	299,934	24,389	8%
Other Revenue/Current Charges	776,961	776,961	619,997	80%	645,639	(25,642)	-4%
650 WATER OPERATION	14,780,500	14,780,500	9,165,674	62%	8,621,711	543,963	6%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	73,821	73,821	28,650	39%	28,455	195	1%
Development Impact Fee	1,452,925	1,452,925	742,110	51%	1,184,076	(441,966)	-37%
651 WATER EXPANSION	1,526,746	1,526,746	770,760	50%	1,212,531	(441,771)	-36%
652 Water Rate Stabilization	11,107	11,107	19,674	177%	5,458	14,216	260%
653 Water Capital Project	3,812,288	3,812,288	2,555,336	67%	1,709,534	845,801	49%
TOTAL WATER FUNDS	20,130,641	20,130,641	12,511,444	62%	11,549,235	962,209	8%
TOTAL ENTERPRISE FUNDS	40,209,356	40,209,356	25,014,211	62%	24,432,569	581,642	2%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,783,719	1,783,719	1,207,113	68%	1,260,021	(52,907)	-4%
740 BUILDING MAINTENANCE	3,258,548	3,258,548	2,145,386	66%	2,254,598	(109,212)	-5%
741 BUILDING REPLACEMENT	831,677	831,677	533,080	64%	510,859	22,221	4%
745 CIP ADMINISTRATION	1,871,909	1,871,909	1,108,748	59%	852,067	256,681	30%
760 UNEMPLOYMENT INSURANCE	2,898	2,898	1,549	53%	1,561	(12)	-1%
770 WORKERS COMPENSATION	800,422	800,422	549,815	69%	530,746	19,070	4%
790 EQUIPMENT REPLACEMENT	1,052,269	1,119,217	795,194	71%	798,566	(3,373)	0%
791 EMPLOYEE BENEFITS	1,229,852	1,229,852	527,374	43%	905,486	(378,113)	-42%
795 GENERAL LIABILITY INSURANCE	1,076,586	1,076,586	714,896	66%	680,142	34,753	5%
TOTAL INTERNAL SERVICE FUNDS	11,907,880	11,974,828	7,583,154	63%	7,794,046	(210,892)	-3%
TOTAL FOR ALL FUNDS	\$ 133,415,168	\$ 133,547,116	\$ 77,241,458	58%	\$ 85,115,720	\$ (7,874,262)	-9%

Attachment: February 2020 Financial and Investment Report [Revision 1] (2714 : Accept February 2020 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2019-20
For the Month and Eight Months Ended February 29, 2020
67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 29,946	\$ 336,684	\$ 330,077	\$ 25,000	\$ 355,077	105%	\$ 24,000
	CITY ATTORNEY	60,264	763,698	497,687	74,149	571,836	75%	40,000
	CITY MANAGER	36,101	580,167	312,798	61,027	373,825	64%	25,000
	HUMAN RESOURCES	61,023	751,908	478,469	-	478,469	64%	53,000
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	57,690	601,560	408,531	6,131	414,661	69%	37,000
	Elections	2,627	178,037	51,323	-	51,323	29%	13,000
	COUNCIL SVCS & RECORDS MGMT	60,317	779,597	459,854	6,131	465,985	60%	51,000
	FINANCE	124,072	1,623,059	1,063,908	11,797	1,075,705	66%	1,050,000
	TOTAL ADMINISTRATION	371,724	4,835,112	3,142,792	178,103	3,320,896	69%	3,000,000
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	338,625	6,371,297	3,853,476	951,155	4,804,631	75%	3,700,000
	Recreation Facility Rentals	102,309	1,356,318	889,801	17,500	907,301	67%	860,000
	Community Services	49,528	648,407	402,499	96,864	499,363	77%	360,000
	Environmental Services	18,628	293,918	149,219	-	149,219	51%	130,000
	Street Maintenance	210,771	2,386,836	1,440,003	96,491	1,536,494	64%	1,450,000
	Downtown Maintenance	18,687	321,475	202,703	40,522	243,225	76%	210,000
	Cable Television	1,736	22,594	14,835	-	14,835	66%	10,000
	COMMUNITY SERVICES	740,283	11,400,845	6,952,536	1,202,532	8,155,068	72%	6,750,000
	CODE COMPLIANCE	12,285	160,943	104,664	-	104,664	65%	90,000
	INFRASTRUCTURE PLANNING & CONGESTION MGMT	52,517	318,537	211,805	-	211,805	66%	30,000
	ECONOMIC DEVELOPMENT PROGRAMS	49,207	809,102	447,333	79,589	526,921	65%	450,000
	TOTAL COMMUNITY SERVICES	854,293	12,689,427	7,716,338	1,282,121	8,998,459	71%	7,350,000
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	84,257	1,300,288	862,572	3,950	866,522	67%	810,000
	Field Operations	679,471	9,094,915	5,920,778	142,710	6,063,487	67%	5,620,000
	Support Services	183,033	2,318,572	1,487,271	-	1,487,271	64%	1,430,000
	Emergency Services/Haz Mat	13,980	195,641	126,840	-	126,840	65%	100,000
	Special Operations	253,211	2,747,543	1,753,908	-	1,753,908	64%	1,380,000
	Dispatch Services	130,375	1,716,002	1,211,811	-	1,211,811	71%	1,020,000
	POLICE	1,344,327	17,372,961	11,363,179	146,660	11,509,839	66%	10,380,000
	FIRE	643,661	6,961,396	4,696,387	73,705	4,770,092	69%	4,500,000
	TOTAL PUBLIC SAFETY	1,987,988	24,334,358	16,059,566	220,365	16,279,931	67%	14,880,000
IV. TRANSFERS								
	Other	156,333	2,142,463	1,250,664	-	1,250,664	58%	1,210,000
	TOTAL TRANSFERS	156,333	2,142,463	1,250,664	-	1,250,664	58%	1,210,000
	TOTAL GENERAL FUND	3,370,337	44,001,359	28,169,361	1,680,589	29,849,949	68%	26,460,000

Attachment: February 2020 Financial and Investment Report [Revision 1] (2714 : Accept February 2020 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Eight Months Ended February 29, 2020
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	342	743,072	141,731	-	141,731	19%	36
205	PUBLIC SAFETY/SUPP.LAW	572	106,863	96,991	-	96,991	91%	5
206	DEVELOPMENT SERVICES FUND							
	Planning	161,477	2,516,024	1,417,141	59,788	1,476,929	59%	1,41
	Building	141,779	2,098,505	1,283,974	186,797	1,470,770	70%	1,16
	Engineering	140,156	1,469,242	975,814	326,567	1,302,381	89%	88
206	DEVELOPMENT SERVICES FUND	443,412	6,083,771	3,676,928	573,152	4,250,080	70%	3,46
207	LONG RANGE PLANNING	44,100	936,054	326,051	186,736	512,786	55%	41
215/216	CDBG	434	5,209	3,472	-	3,472	67%	3
225	ASSET SEIZURE	5,000	-	5,000	-	5,000	n/a	5
229	LIGHTING AND LANDSCAPE	7,506	206,031	114,292	27,297	141,589	69%	12
230	COMMUNITY FACILITIES DISTRICT	2,759	46,979	22,816	-	22,816	49%	1
232	ENVIRONMENT PROGRAMS	26,942	439,095	263,910	21,962	285,872	65%	24
234	MOBILE HOME PARK	35	425	280	-	280	66%	3
236	HOUSING MITIGATION	103,474	2,285,207	910,940	181,107	1,092,047	48%	1,54
240	EMPLOYEE ASSISTANCE	81	28,477	21,177	-	21,177	74%	1
247	ENVIRONMENTAL REMEDIATION	112	-	2,205	-	2,205	n/a	2
250	COMH-SUCCESSOR AGENCY-MHRDA	2,562	6,973,161	4,188,417	-	4,188,417	60%	8,51
255	HOUSING SUCCESSOR AGENCY	118,313	935,845	671,145	150,000	821,145	88%	3,69
TOTAL SPECIAL REVENUE FUNDS		755,645	18,790,189	10,445,354	1,140,253	11,585,607	62%	18,44
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	20,789	13,797,895	1,769,524	431,520	2,201,043	16%	30
302	PARK MAINTENANCE	81,530	1,227,852	780,040	93,196	873,236	71%	72
303	LOCAL DRAINAGE	19,584	2,924,734	239,816	297,431	537,248	18%	7
304	LOCAL DRAIN. NON-AB1600	6,286	486,660	54,569	50,103	104,672	22%	1
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,203	6,695,683	3,173,152	35,956	3,209,108	48%	2,68
308	STREET CIP	118,050	8,456,398	4,539,289	284,507	4,823,796	57%	1,71
309	TRAFFIC IMPACT	84,617	18,536,119	777,373	172,806	950,179	5%	4,67
311	POLICE IMPACT	2,430	226,130	118,298	-	118,298	52%	11
313	FIRE IMPACT	281	53,425	27,514	9,462	36,976	69%	2
346	PUBLIC FAC.NON AB1600	614	930,930	86,669	165,721	252,390	27%	12
347	PUBLIC FACILITIES IMPACT	2,331	177,688	99,330	11,418	110,747	62%	3
348	LIBRARY IMPACT	150,521	3,849,389	1,029,670	1,458,141	2,487,812	65%	39
350	UNDERGROUNDING	90	1,075	720	-	720	67%	3
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	22,289	2,190,266	263,492	16,286	279,778	13%	5
360	COMM/REC CENTER IMPACT	11,485	3,521,478	545,438	2,439,868	2,985,306	85%	6
TOTAL CAPITAL PROJECTS FUNDS		523,098	63,075,723	13,504,894	5,466,417	18,971,310	30%	10,97
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	1,609	311,636	230,262	-	230,262	74%	22
441	POLICE FACILITY BOND DEBT	1,300	380,552	302,004	-	302,004	79%	29
TOTAL DEBT SERVICE FUNDS		2,909	692,188	532,266	-	532,266	77%	52

Attachment: February 2020 Financial and Investment Report [Revision 1] (2714 : Accept February 2020 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Eight Months Ended February 29, 2020
 67% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	850,852	12,087,541	6,934,122	592,369	7,526,491	62%	6,47
641	SEWER CAPITAL EXPANSION	542,500	13,399,255	1,170,201	207,767	1,377,969	10%	1,01
642	SEWER RATE STABILIZATION	90	1,078	720	-	720	67%	
643	SEWER-CAPITAL PROJECTS	914,422	10,335,505	4,294,134	1,336,057	5,630,191	54%	3,96
TOTAL SEWER FUND(S)		2,307,864	35,823,378	12,399,178	2,136,193	14,535,371	41%	11,45
WATER								
	Water Operations	712,961	14,203,740	8,584,289	1,265,810	9,850,099	69%	7,00
	Utility Billing	58,076	789,099	539,075	15,992	555,066	70%	50
	Water Conservation	5,402	198,464	44,225	95,400	139,625	70%	5
650	WATER OPERATIONS	776,438	15,191,302	9,167,588	1,377,202	10,544,790	69%	7,56
651	WATER CAPITAL EXPANSION	63,740	2,281,224	913,506	185,339	1,098,845	48%	1,36
652	WATER RATE STABILIZATION	29	352	232	-	232	66%	
653	WATER-CAPITAL PROJECTS	1,895	3,731,255	388,195	57,312	445,508	12%	70
TOTAL WATER FUND(S)		842,103	21,204,133	10,469,522	1,619,853	12,089,375	57%	9,63
TOTAL ENTERPRISE FUNDS		3,149,968	57,027,512	22,868,699	3,756,047	26,624,746	47%	21,09
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	132,589	2,334,467	1,182,872	272,920	1,455,792	62%	1,00
740	BUILDING MAINTENANCE	305,037	3,338,819	2,004,771	241,773	2,246,545	67%	1,95
741	BUILDING REPLACEMENT	-	278,950	181,809	49,138	230,948	83%	23
745	CIP ADMINISTRATION	131,921	1,619,521	1,108,729	9,386	1,118,115	69%	86
760	UNEMPLOYMENT	-	10,000	11,990	-	11,990	120%	
770	WORKERS COMPENSATION	25,591	952,045	815,949	-	815,949	86%	50
790	EQUIPMENT REPLACEMENT	277,672	1,213,015	502,364	83,095	585,459	48%	24
791	EMPLOYEE BENEFITS FUND	8,487	615,000	395,564	-	395,564	64%	77
795	GEN. LIABILITY INSURANCE	9,823	1,044,568	854,221	-	854,221	82%	84
TOTAL INTERNAL SERVICE FUNDS		891,121	11,406,384	7,058,270	656,312	7,714,582	68%	6,43
REPORT TOTAL		\$ 8,693,077	\$ 194,993,355	\$ 82,578,843	\$ 12,699,618	\$ 95,278,461	49%	\$ 83,93

Attachment: February 2020 Financial and Investment Report [Revision 1] (2714 : Accept February 2020 Financial and Investment Report)

		 City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Eight Months Ended February 29, 2020 67% of Year Complete							
Fund No.	Fund	Fund Balance 06-30-19	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 17,924,089	\$ 23,695,617	55%	\$ 28,169,361	64%	\$ (4,473,744)	\$ 1,680,589	\$ 11,769,756
TOTAL GENERAL FUND		\$ 17,924,089	\$ 23,695,617	55%	\$ 28,169,361	64%	\$ (4,473,744)	\$ 1,680,589	\$ 11,769,756
202	STREET MAINTENANCE	37,376	\$ 433,374	59%	\$ 141,731	61%	\$ 291,643	\$ -	\$ 329,019
205	PUBLIC SAFETY/SUPPL. LAW	93,997	98,654	99%	96,991	66%	1,663	-	95,660
206	DEVELOPMENT SERVICES	1,329,077	3,103,076	59%	3,676,928	60%	(573,853)	573,152	182,072
207	LONG RANGE PLANNING	1,248,188	453,400	62%	326,051	35%	127,349	186,736	1,188,801
215 / 216	CDBG	57,072	710	19%	3,472	67%	(2,762)	-	54,310
225	ASSET SEIZURE	130,210	17,369	780%	5,000	n/a	12,369	-	142,579
229	LIGHTING AND LANDSCAPE	158,268	97,416	52%	114,292	55%	(16,876)	27,297	114,096
230	COMMUNITY FACILITIES DISTRICT	112,386	24,774	56%	22,816	49%	1,958	-	114,344
232	ENVIRONMENTAL PROGRAMS	335,097	290,421	71%	263,910	60%	26,511	21,962	339,646
234	MOBILE HOME PK RENT STAB.	52,468	6,262	717%	280	66%	5,982	-	58,450
235	SENIOR HOUSING	228,559	2,552	57%	-	n/a	2,552	-	231,111
236	HOUSING MITIGATION	2,520,285	645,868	28%	910,940	40%	(265,072)	181,107	2,074,106
240	EMPLOYEE ASSISTANCE	63,226	13,624	47%	21,177	74%	(7,553)	-	55,673
247	ENVIRONMENT REMEDIATION	135,636	2,751	97%	2,205	n/a	546	-	136,182
250	COMH-SUCCESSOR AGENCY-MHRDA	(500,829)	7,348,767	106%	4,188,417	60%	3,160,350	2,644,902	14,619
255	HOUSING SUCCESSOR AGENCY	3,976,695	212,712	38%	671,145	72%	(458,433)	150,000	3,368,262
260	PUBLIC ART	185	-	n/a	-	-	-	-	185
TOTAL SPECIAL REVENUE FUNDS		\$ 9,977,896	\$ 12,751,731	73%	\$ 10,445,354	56%	\$ 2,306,377	\$ 3,785,155	\$ 8,499,118
301	PARK DEV. IMPACT FUND	\$ 4,116,066	\$ 855,932	32%	\$ 1,769,524	13%	\$ (913,592)	\$ 431,520	\$ 2,770,954
302	PARK MAINTENANCE	4,078,868	316,877	23%	780,040	64%	(463,163)	93,196	3,522,509
303	LOCAL DRAINAGE	12,117,049	636,917	39%	239,816	8%	397,100	297,431	12,216,718
304	LOCAL DRAINAGE/NON-AB1600	1,563,382	17,368	21%	54,569	11%	(37,201)	50,103	1,476,078
306	AGRICULTURE AND OPEN SPACE PRESERV	7,951,064	808,821	24%	3,173,152	47%	(2,364,331)	35,956	5,550,776
308	STREET CIP	3,299,044	2,796,077	55%	4,539,289	54%	(1,743,213)	284,507	1,271,324
309	TRAFFIC IMPACT FUND	(1,263,866)	847,261	66%	777,373	4%	69,888	172,806	(1,366,785)
311	POLICE IMPACT FUND	(640,897)	149,298	51%	118,298	52%	31,000	-	(609,897)
313	FIRE IMPACT FUND	3,873,198	89,587	19%	27,514	51%	62,073	9,462	3,925,809
346	PUBLIC FACILITIES NON-AB1600	(178,488)	177,100	28%	86,669	9%	90,430	165,721	(253,779)
347	PUBLIC FACILITIES IMPACT FUND	688,851	159,088	72%	99,330	56%	59,759	11,418	737,192
348	LIBRARY IMPACT FUND	2,987,436	313,333	33%	1,029,670	27%	(716,337)	1,458,141	812,958
350	UNDERGROUNDING	861,895	9,622	19%	720	67%	8,902	-	870,797
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,477,523	84,407	13%	263,492	12%	(179,085)	16,286	1,282,152
360	COMM/REC CTR IMPACT FUND	2,122,228	546,899	40%	545,438	15%	1,462	2,439,868	(316,179)
TOTAL CAPITAL PROJECT FUNDS		\$ 43,053,353	\$ 7,808,586	39%	\$ 13,504,894	21%	\$ (5,696,308)	\$ 5,466,417	\$ 31,890,629
420	CIVIC CENTER DEBT	\$ 171,351	\$ 200,945	67%	\$ 230,262	74%	\$ (29,316)	\$ 200	\$ 141,835
441	POLICE FACILITY BOND DEBT	70,213	187,214	50%	302,004	79%	(114,791)	254	(44,832)
TOTAL DEBT SERVICE FUNDS		\$ 241,564	\$ 388,159	57%	\$ 532,266	77%	\$ (144,107)	\$ 454	\$ 97,003

		 City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Eight Months Ended February 29, 2020 67% of Year Complete							
Fund No.	Fund	Fund Balance 06-30-19	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
640	SEWER OPERATIONS	\$ 3,235,529	\$ 7,254,265	60%	\$ 6,934,122	57%	\$ 320,143	592,369	2,963,303
641	SEWER IMPACT FUND*	18,119,442	3,237,604	64%	1,170,201	9%	2,067,403	207,767	19,979,077
642	SEWER RATE STABILIZATION	2,625,280	29,315	56%	720	67%	28,595	-	2,653,875
643	SEWER-CAPITAL PROJECTS	9,791,525	1,981,583	69%	4,294,134	42%	(2,312,551)	1,336,057	6,142,917
650	WATER OPERATIONS	4,010,886	9,165,674	62%	9,167,588	60%	(1,915)	1,377,202	2,631,770
651	WATER IMPACT FUND*	2,507,584	770,760	50%	913,506	40%	(142,746)	185,339	2,179,499
652	WATER RATE STABILIZATION	1,761,549	19,674	177%	232	66%	19,442	-	1,780,991
653	WATER -CAPITAL PROJECT	1,685,295	2,555,336	67%	388,195	10%	2,167,140	57,312	3,795,123
TOTAL ENTERPRISE FUNDS		\$ 43,737,090	\$ 25,014,211	62%	\$ 22,868,699	40%	\$ 2,145,512	\$ 3,756,047	\$ 42,126,555
730	INFORMATION SERVICES	\$ 902,325	\$ 1,207,113	68%	\$ 1,182,872	51%	\$ 24,242	\$ 272,920	\$ 653,647
740	BUILDING MAINTENANCE	64,490	2,145,386	66%	2,004,771	60%	140,614	241,773	(36,669)
741	BUILDING REPLACEMENT	2,515,067	533,080	64%	181,809	65%	351,270	49,138	2,817,199
745	CIP ENGINEERING	62,517	1,108,748	59%	1,108,729	68%	18	9,386	53,149
760	UNEMPLOYMENT	142,515	1,549	53%	11,990	120%	(10,441)	-	132,074
770	WORKERS COMPENSATION	2,015,978	549,815	69%	815,949	86%	(266,133)	30,000	1,719,845
790	EQUIPMENT REPLACEMENT	5,238,985	795,194	71%	502,364	41%	292,830	83,095	5,448,720
791	EMPLOYEE BENEFITS FUNDS	(233,198)	527,374	43%	395,564	64%	131,809	-	(101,389)
795	GEN. LIABILITY INSURANCE	1,379,596	714,896	66%	854,221	82%	(139,325)	-	1,240,271
TOTAL INTERNAL SERVICE FUNDS		\$ 12,088,275	\$ 7,583,154	63%	\$ 7,058,270	62%	\$ 524,884	\$ 686,312	\$ 11,926,847
SUMMARY BY FUND TYPE									
GENERAL FUND GROUP		\$ 17,924,089	\$ 23,695,617	55%	\$ 28,169,361	64%	\$ (4,473,744)	\$ 1,680,589	\$ 11,769,756
SPECIAL REVENUE GROUP		9,977,896	12,751,731	73%	10,445,354	56%	2,306,377	3,785,155	8,499,118
DEBT SERVICE GROUP		241,564	388,159	57%	532,266	77%	(144,107)	454	97,003
CAPITAL PROJECTS GROUP		43,053,353	7,808,586	39%	13,504,894	21%	(5,696,308)	5,466,417	31,890,629
ENTERPRISE GROUP		43,737,090	25,014,211	62%	22,868,699	40%	2,145,512	3,756,047	42,126,555
INTERNAL SERVICE GROUP		12,088,275	7,583,154	63%	7,058,270	62%	524,884	686,312	11,926,847
TOTAL ALL GROUPS		\$ 127,022,269	\$ 77,241,458	58%	\$ 82,578,843	42%	\$ (5,337,386)	\$ 15,374,973	\$ 106,309,908

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

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

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

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



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

PREPARED BY: Lynette Kong, Associate Engineer
APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING FY2020-21 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

RECOMMENDATION(S)

Adopt resolution approving a list of street rehabilitation projects to be funded by SB 1, The Road Repair and Accountability Act of 2017.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Financial Sustainability
Transportation

REPORT NARRATIVE:

City staff are in the process of finalizing the design for the 2020 Pavement Rehabilitation Project. The upcoming project will include rehabilitation of sections of Dunne and Tennant Avenues, focusing on maintaining two of the City's most significant arterial streets. The project will reconstruct Roble and Encino Drives, two of the City's most deteriorated residential streets. Additionally, the project will include slurry seal of a small portion of Condit Road. Finally, the project will also complete specific spot repairs and crack seal throughout the City.

As planned, the project prioritizes the repair of the City's arterial and collector roadways, while allocating some of the available funds to the resurfacing of residential streets. With annual contributions from State Senate Bill 1 (SB1), and Measure B (2016 voter approved countywide half-cent tax to enhance transportation), the City has been able to resurface a greater number of roadways than in the past. However, even with this funding it is anticipated that the City streets will continue to degrade. The Council will receive a more comprehensive infrastructure update, including pavement management, as part of the upcoming budget process. This update is provided now to meet timing requirements associated with the requirements of SB1.

SB 1, which is known as the Road Repair and Accountability Act of 2017, established a tax that formed the Road Maintenance and Rehabilitation Account (RMRA). The RMRA is intended to fund basic road maintenance and rehabilitation needs on the local street and road systems within the State. Prior to receiving RMRA funds for the Fiscal Year (FY) 2020-21, the City must submit a list of projects proposed to be funded with RMRA

funds, adopted by resolution, to the California Transportation Commission (CTC) by May 1, 2020. The list of projects proposed to be funded must include a description and the location of each proposed project, a proposed project schedule, and the estimated useful life of the improvement (Streets and Highways Code Section 2034(a)).

To ensure that the City is eligible for FY 2020-21 SB 1 RMRA funding, the proposed resolution (Attachment 1) identifies the City street locations proposed to be funded by FY 2020-21 SB 1 RMRA funds. These streets include: 1) East Dunne Avenue from Monterey Road to Condit Road, 2) Tennant Avenue from Monterey Road to near the freeway interchange, and 3) Roble and Encino Drives. The proposed resolution is expected to fulfill the CTC's requirement that the City Council adopt, via resolution, a list of projects proposed for the next fiscal year's SB 1 RMRA funds and meets the intention of prioritizing these funds for basic road maintenance and rehabilitation projects, and on critical safety projects.

COMMUNITY ENGAGEMENT: Inform

City staff are working on a significant communication planning effort to be implemented ahead of the work, which is planned to occur during the summer months.

ALTERNATIVE ACTIONS:

The Council could direct staff to submit a funding request for an alternative project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On March 6, 2019, City Council passed Resolution No. 19-013 adopting a list of street rehabilitation projects for fiscal year 2019-20 funded by SB 1
- On June 6, 2018, City Council adopted the Fiscal Year 2018-19 through 2023-24 Capital Improvement Project.

FISCAL AND RESOURCE IMPACT:

The FY 2020-21 SB 1 RMRA projected revenues of \$863,922 will be included as a revenue source for Fund 308 (Street CIP) in the City's CIP under Pavement Rehabilitation Program (Project No. 519000) as part of the FY 2020-21 project budget.

CEQA (California Environmental Quality Act):

Categorical Exemption.

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

LINKS/ATTACHMENTS:

1. SB1 Resolution - FY 20-21 SB 1 Project List

RESOLUTION NO. _____

**RESOLUTION ADOPTING A LIST OF PROJECTS FOR
FISCAL YEAR 2020-21 FUNDED BY SB 1: THE ROAD
REPAIR AND ACCOUNTABILITY ACT OF 2017**

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$863,922 in RMRA funding in Fiscal Year 2020-21 from SB 1; and

WHEREAS, this is the fourth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has received significant public input on street rehabilitation needs and uses that input to support development of the project list; and

WHEREAS, the City uses a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate East Dunne and Tennant Avenues, two of the City's east/west main arterial streets, and Roble and Encino Drives, two of the most deteriorated residential streets in the City, this year, and multiple similar projects into the future; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City’s streets and roads are in an “at-risk” condition and this revenue will help us increase the overall quality of our road system and over the next decade support and maintain the City’s streets and roads into a “good” condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Morgan Hill, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2020-21 Road Maintenance and Rehabilitation Account revenues:

Project Title: 2020 Pavement Resurfacing Project

Project Description: The removal and replacement of failed pavement sections, micro-milling of the pavement and slurry seal surface treatment on East Dunne Avenue from Monterey Road to Laurel Road, a 2” pavement grind and hot mix asphalt concrete pavement fill on East Dunne Avenue from Laurel Road to Condit Road, a 2” hot mix asphalt concrete overlay on Tennant Avenue from Vineyard Boulevard to Ant Court, reconstruction of Roble and Encino Drives, restoration of thermoplastic striping and traffic loop detectors.

Project Locations: 1) East Dunne Avenue, from Monterey Road to Condit Road; 2) Tennant Avenue, from Vineyard Boulevard to Ant Court; and 3) Roble and Encino Drives.

Estimated Project Schedule: Start (July 2020)– Completion (October 2020) based on the component being funded with RMRA funds

Estimated Project Useful Life: The City’s Pavement Management System calculates a new useful life of 20 years for these roadways

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 15th day of April 2020 by the following vote:

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

DATE: _____

RICH CONSTANTINE, MAYOR

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on April 15, 2020.

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

DATE: _____

Irma Torrez, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

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

APPROVE AGREEMENTS FOR ON-CALL GENERAL CONTRACTORS

RECOMMENDATION(S)

1. Award two-year On-Call General Contractor Services contracts to the following general contractors in the amount of \$200,000: DRP Builders, Inc., Weston Construction, Inc., Valenti Builders, Inc., Castlewood Construction Company, Inc. and Tucker Construction, Inc.; and
2. Authorize the City Manager to execute and administer the On-Call General Contractor Services contracts with DRP Builders, Inc., Weston Construction, Inc., Valenti Builders, Inc., Castlewood Construction Company, Inc. and Tucker Construction Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

The purpose of this report is to provide the City Council with an opportunity to consider awarding contracts to five general contractors for On-Call General Contractor Services in the amount of \$200,000 each. Each contract will have a two-year term with authorization for the City Manager to execute two consecutive one-year extensions. If approved, the initial two-year terms will be from May 1, 2020 to June 30, 2022.

The City has long contracted with general contractors to provide construction and repair services for City facilities. The type of work referred to in this report is not big projects, like expanding the Library, but rather smaller projects like dry rot repair, cabinet construction, subroof repair, and minor remodeling. The bid process to select general contractors for individual projects and process contract documentation can take up to two months and many hours of staff time. State laws that require contractors to register with the Department of Industrial Relations and pay prevailing wages have made it difficult to find contractors as the universe of right-sized firms interested in conducting their business under these constraints has shrunk. Many small firms find the paperwork too burdensome and large firms find City maintenance projects too small for them. The City is often left feeling fortunate to find a single contractor interested in the work.

Instead of continuing with this unsatisfactory and inefficient process, the City issued a Request for Proposals (RFP) to establish a pre-qualified pool of on-call general

contractors who are eligible to respond to work proposal requests and complete construction and repair work for the City. Since these contractors will already be under contract with the City, the amount of time needed to begin construction projects will be greatly reduced. Proposals for the on-call general contractor services were solicited from January through March 2020. In soliciting proposals, the City advertised in the Morgan Hill Times on January 31st and February 7th, on the City website, and Public Purchase, an online bid solicitation service. Staff also contacted all registered “Class B” licensed general contractors on the City’s Informal Bidder’s List.

Proposals were due on March 9, 2020, and six proposals were received. One of the proposals was rejected because the required narrative was significantly incomplete. The remaining five proposals were reviewed and accepted as complete. The review committee recommended that all five be accepted and awarded contracts in order to establish a large-enough pool of contractors to efficiently meet the City’s needs. Unlike single-project contract awards, the award of these contracts doesn’t guarantee any work to any of the contractors. The contract award merely places them in the pool of eligible contractors.

Future on-call projects will be initiated by issuing a Proposal Request Worksheet describing the scope of work for an individual project to the pre-qualified on-call general contractor pool. The City intends to request proposals from more than one contractor for each project. Actual contractor usage will vary and be based upon cost, ability, responsiveness, and need.

Staff recommends the award of on-call general contractor services contracts to the following five general contractors in the amount of \$200,000 each for a term of two years with options for two consecutive one-year extensions:

1. DRP Builders, Inc.
2. Weston Construction, Inc.
3. Castlewood Construction Company, Inc.
4. Tucker Construction, Inc.
5. Valenti Builders, Inc.

COMMUNITY ENGAGEMENT: Not Applicable/Inform

As this is an administrative activity with no actual projects attached to it, no community engagement was conducted before this report was prepared. If approved, the community will be informed about the actual projects resulting from these contracts via the City’s normal communication tools including on-site project signs, “The Scoop,” weekly maintenance update on the City website, and Nextdoor. Additional engagement activities may be pursued for projects that are likely to lead to strong interest or community concern.

ALTERNATIVE ACTIONS:

The City Council could decline to approve these contracts and instead direct staff to continue issuing separate contracts for each project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There has been no prior City Council action on on-call contracts for general contractors.

FISCAL AND RESOURCE IMPACT:

It is anticipated that no additional costs will be created by entering into these agreements. Staff believe there may in fact be cost savings, for necessary projects, by increasing the number of proposals the City receives for any specific project.

The on-call general contractor services costs will be paid proportionally by the building maintenance budget (Fund 740) or Capital Improvement Project funds for City facilities including, but not limited to, the Aquatics Center, Centennial Recreation Center, Civic Center, Community and Cultural Center, Friendly Inn, Police Department, Corporation Yard, utility sites and the City-owned fire stations. Given the financial challenges created by COVID-19, staff will be judicious in requesting proposals for work and, certainly for the next six months, will be largely limiting proposal requests to projects needed to secure or prevent damage to City facilities or to projects that are intended to result in a reduction of expenses or an increase in revenues.

CEQA (California Environmental Quality Act):

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. DRP Builders Agreement
2. Weston Miles Agreement
3. Valenti Builders Agreement
4. Castlewood Construction Agreement
5. Tucker Construction Agreement

**CITY OF MORGAN HILL
ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS
DRP Builders, Inc.**

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and DRP Builders, Inc. a (corporation, LLC) ("Contractor") effective as of _____, 2020.

The parties agree as follows:

- 1. Scope of Services.** The Scope of Services attached as Exhibit A to this Contract provides for the general scope of and type of work to be performed by Contractor. When City identifies a project, City shall request a proposal from Contractor (Proposal Request Worksheet) based on the Scope of Services. Contractor shall provide a proposal within the number of days specified by City in its request. City and Contractor may negotiate the cost and scope. Upon receipt of a written notice to proceed, Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's proposal, subject to the direction of the City through its staff that it may provide from time to time. A Change Order shall be prepared as provided in the General Conditions for changes in scope, price, or time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call support on an as needed basis.
- 2. Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following, and the definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, unless otherwise indicated:
 - 2.1** Contract;
 - 2.2** Payment and Performance Bonds (if Work Order exceeds \$25,000);
 - 2.3** Special Conditions;
 - 2.4** General Conditions;
 - 2.5** Change Orders, if any;
 - 2.6** Notice to Proceed (via email);
 - 2.7** The following developed for each project: Proposal Request Worksheet ("Contractor's Proposal"), On-Call Construction Work Order ("Work Order")
- 3. Time for Performance.**
 - a.** Time of Essence. Time is of the essence in the performance of this Contract. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Contract. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Contract consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.
 - b.** Performance Schedule. Contractor shall commence the services and related work pursuant to this Contract upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the Work Order/Contractor's Proposal. When requested by Contractor, extensions to

the time period(s) specified may be approved in writing by the City Manager through a Change Order.

- c. **Term and Compliance with Work Order.** Unless earlier terminated as provided elsewhere in this Contract, this Contract shall continue in full force and effect for a period of two (2) years, commencing on the Effective Date. The City may, at its sole discretion, extend the term of this Contract on a 12-month basis not to exceed three (3) additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager. Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Contract shall be based upon the issuance of a Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a task/work order and minor construction agreement issued by the City.

4. **Compensation and Payment.**

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates in each Proposal Request Worksheet submitted by the Contractor and accepted by the City in the form of an issued Work Order. In no event shall Contractor's compensation exceed two hundred thousand dollars (\$200,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

5. Termination. City or Contractor shall have the right to terminate this Contract, without cause, by giving thirty (30) days' written notice, or less under urgent circumstances. Upon such termination, Contractor shall submit to City an itemized statement of services performed for which compensation has not been paid. City may require Contractor to complete certain work. Upon receipt of such notice, the Contractor shall immediately cease all work under this Contract, unless the notice provides otherwise. If the City suspends or terminates a portion of this Contract such suspension or termination shall not make void or invalidate the remainder of this Contract. The City Manager is authorized to terminate this Contract on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Contract. Contractor shall therefore provide properly skilled personnel to perform all services under this Contract. All work performed by Contractor, its employees, or its Subcontractors, under this Contract shall be in accordance with applicable legal

requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

7. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Morgan Hill business license.

8. Contractor's Obligations. Contractor must provide an executed copy of the Contract within ten (10) days of receipt of the Notice of Award email. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

8.1 Bonds. For any Work Order more than Twenty-Five Thousand Dollars (\$25,000.00), within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work on the Project, Contractor must submit a payment bond and a performance bond, each for one hundred percent (100%) of the Work Order price, using the bond forms provided and in accordance with the requirements of the Contract Documents. Contractor may not proceed with the Work until City has approved the bonds.

8.2 Insurance. Contractor must provide the required insurance certificates and endorsements within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work.

8.3 If the performance of Contractor's work or service under this Contract for a specific Work Order involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering 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 Contract as described in the General Conditions.

9. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

10. Labor Code Compliance.

- 10.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 10.2 Prevailing Wages.** Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 10.3 DIR Registration.** City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
- 10.4 Wage Theft Prevention.** All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.
- 11. Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 12. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Cynthia Iwanaga/Management Analyst	Rebekah Robertson, President DRP Builders, Inc.
Address	17575 Peak Avenue	P.O. Box 1208
City/state/zip	Morgan Hill, California 95037	Morgan Hill, California 95037
Phone		(408) 683-4221
Fax		(408) 350-2134
Email	Michelle.bigelow@morganhill.ca.gov	Rebekah@drpbuilder.com
Copy to:	Cynthia.iwanaga@morganhill.ca.gov	

13. General Provisions.

- 13.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 13.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 13.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court for Santa Clara County, and no other place.
- 13.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 13.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

- 13.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party.

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

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

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

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:
 DRP BUILDERS, INC.


 Signature

Rebekah Robertson/President
 Name/Title [print]

Date: 4/2/20

Corporate entities must provide a second signature:


 Signature

David Robertson/CFO
 Name/Title [print]

4/2/20
 Date: _____

727299
 Contractor's License Number(s)

07/31/2020
 Expiration Date(s)

Seal:

1000001878
 Contractor's DIR Registration Number(s)
 (if applicable)

06/30/2022
 Expiration Date

**CITY OF MORGAN HILL
CONTRACT
FOR PUBLIC WORKS PROJECTS
DRP Builders, Inc.**

ATTACHMENT A

The following documents are attached and made part of the Contract Documents:

X Project Scope of Work

The scope of work includes construction and repair services for City buildings and facilities on an on-call basis.

On-call projects will be initiated by issuing a Request Proposal Worksheet describing the scope of work to the on-call general contractors. A Work Order will be issued to the selected general contractor to initiate work on a specific project.

It is anticipated that the on-call general contractor's scope of work and if appropriate, their subcontractor's scope of work may entail construction in any area including:

1. Framing and Rough Carpentry: ranging from the building of small enclosures to dry rot repair to structural construction including items such as decks
2. Finish Carpentry: as needed to support projects
3. Drywall, Lathing and Plastering: ranging from maintenance such as repairing damaged sections of wall to a project such as new wall construction
4. Glazing: ranging from maintenance such as replacing glass in a window to projects such as replacing all windows/doors in a residence.
5. Ceramic and Mosaic Tile: ranging from maintenance such as repairing broken tiles to projects such as a bathroom remodel.
6. Plumbing: ranging from maintenance such as replacing a faucet to a project such as a bathroom remodel.
7. Electrical: ranging from maintenance such as replacing light switches to projects such as installing an electrical panel or re-wiring a house.
8. Concrete and Masonry: ranging from repairing a sidewalk or walkway or bricklaying
9. Painting: ranging from minor patch and paint to paint a room or entire building.
10. Roofing: ranging from maintenance such as a roof patch or repairing the fascia to a project such as a new residential roof
11. Sheet Metal and Welding: as needed to support projects

12. Flooring: ranging from maintenance such as repairing tiles or tears in flooring to projects such as replacing floor joists and installing new flooring
13. Asbestos and Hazardous Substance Abatement: as needed per project¹

¹ Prior to commencement of any work involving asbestos and/or hazardous substance abatement, contractor will provide evidence of proper license and/or certification (ASB or HAZ) if required by the State of California. Further, contractor may be required to provide evidence of pollution liability insurance prior to commencing work if City Risk Manager determines the project warrants such coverage.

**CITY OF MORGAN HILL
ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS
Weston Construction, Inc.**

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Weston Construction, Inc. a (corporation, LLC) ("Contractor") effective as of _____, 2020.

The parties agree as follows:

1. Scope of Services. The Scope of Services attached as Exhibit A to this Contract provides for the general scope of and type of work to be performed by Contractor. When City identifies a project, City shall request a proposal from Contractor (Proposal Request Worksheet) based on the Scope of Services. Contractor shall provide a proposal within the number of days specified by City in its request. City and Contractor may negotiate the cost and scope. Upon receipt of a written notice to proceed, Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's proposal, subject to the direction of the City through its staff that it may provide from time to time. A Change Order shall be prepared as provided in the General Conditions for changes in scope, price, or time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call support on an as needed basis.

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the following, and the definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, unless otherwise indicated:

- 2.1** Contract;
- 2.2** Payment and Performance Bonds (if Work Order exceeds \$25,000);
- 2.3** Special Conditions;
- 2.4** General Conditions;
- 2.5** Change Orders, if any;
- 2.6** Notice to Proceed (via email);
- 2.7** The following developed for each project: Proposal Request Worksheet ("Contractor's Proposal"), On-Call Construction Work Order ("Work Order")

3. Time for Performance.

- a. **Time of Essence.** Time is of the essence in the performance of this Contract. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Contract. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Contract consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.
- b. **Performance Schedule.** Contractor shall commence the services and related work pursuant to this Contract upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the

Work Order/Contractor's Proposal. When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager through a Change Order.

- c. Term and Compliance with Work Order. Unless earlier terminated as provided elsewhere in this Contract, this Contract shall continue in full force and effect for a period of two (2) years, commencing on the Effective Date. The City may, at its sole discretion, extend the term of this Contract on a 12-month basis not to exceed three (3) additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager. Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Contract shall be based upon the issuance of a Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a task/work order and minor construction agreement issued by the City.

4. Compensation and Payment.

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates in each Proposal Request Worksheet submitted by the Contractor and accepted by the City in the form of an issued Work Order. In no event shall Contractor's compensation exceed two hundred thousand dollars (\$200,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

5. Termination. City or Contractor shall have the right to terminate this Contract, without cause, by giving thirty (30) days' written notice, or less under urgent circumstances. Upon such termination, Contractor shall submit to City an itemized statement of services performed for which compensation has not been paid. City may require Contractor to complete certain work. Upon receipt of such notice, the Contractor shall immediately cease all work under this Contract, unless the notice provides otherwise. If the City suspends or terminates a portion of this Contract such suspension or termination shall not make void or invalidate the remainder of this Contract. The City Manager is authorized to terminate this Contract on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Contract. Contractor shall therefore provide properly skilled personnel to perform all services under this Contract. All work performed by Contractor, its employees, or its Subcontractors, under this Contract shall be in accordance with applicable legal

requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

7. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Morgan Hill business license.

8. Contractor's Obligations. Contractor must provide an executed copy of the Contract within ten (10) days of receipt of the Notice of Award email. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

8.1 Bonds. For any Work Order more than Twenty-Five Thousand Dollars (\$25,000.00), within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work on the Project, Contractor must submit a payment bond and a performance bond, each for one hundred percent (100%) of the Work Order price, using the bond forms provided and in accordance with the requirements of the Contract Documents. Contractor may not proceed with the Work until City has approved the bonds.

8.2 Insurance. Contractor must provide the required insurance certificates and endorsements within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work.

8.3 If the performance of Contractor's work or service under this Contract for a specific Work Order involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering 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 Contract as described in the General Conditions.

9. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

10. Labor Code Compliance.

Attachment: Weston Miles Agreement (2708 : On Call GC contracts)

- 10.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 10.2 Prevailing Wages.** Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 10.3 DIR Registration.** City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
- 10.4 Wage Theft Prevention.** All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.
- 11. Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 12. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Cynthia Iwanaga/Management Analyst	Sam Carlson, COO Weston Construction, Inc.
Address	17575 Peak Avenue	17500 Depot Street, Ste. 200
City/state/zip	Morgan Hill, California 95037	Morgan Hill, California 95037
Phone		(925) 766-1460
Fax		
Email	Michelle.bigelow@morganhill.ca.gov	sam@wmarchitects.com
Copy to:	Cynthia.iwanaga@morganhill.ca.gov	

13. General Provisions.

- 13.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 13.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 13.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court for Santa Clara County, and no other place.
- 13.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 13.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

Attachment: Weston Miles Agreement (2708 : On Call GC contracts)

13.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party.

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

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

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

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

WESTON CONSTRUCTION, INC.

DocuSigned by:

 Signature

Charles Weston President

Name/Title [print]

Date: 3/30/2020

Corporate entities must provide a second signature:

DocuSigned by:

 Signature

Sam Carlson Treasurer

Name/Title [print]

3/30/2020
 Date: _____

739059
 Contractor's License Number(s)

01/31/2022
 Expiration Date(s)

Seal:

PW-LR-1000572541
 Contractor's DIR Registration Number(s)
 (if applicable)

 Expiration Date

Attachment: Weston Miles Agreement (2708 : On Call GC contracts)

**CITY OF MORGAN HILL
CONTRACT
FOR PUBLIC WORKS PROJECTS
Weston Construction, Inc.**

ATTACHMENT A

The following documents are attached and made part of the Contract Documents:

X Project Scope of Work

The scope of work includes construction and repair services for City buildings and facilities on an on-call basis.

On-call projects will be initiated by issuing a Request Proposal Worksheet describing the scope of work to the on-call general contractors. A Work Order will be issued to the selected general contractor to initiate work on a specific project.

It is anticipated that the on-call general contractor's scope of work and if appropriate, their subcontractor's scope of work may entail construction in any area including:

1. Framing and Rough Carpentry: ranging from the building of small enclosures to dry rot repair to structural construction including items such as decks
2. Finish Carpentry: as needed to support projects
3. Drywall, Lathing and Plastering: ranging from maintenance such as repairing damaged sections of wall to a project such as new wall construction
4. Glazing: ranging from maintenance such as replacing glass in a window to projects such as replacing all windows/doors in a residence.
5. Ceramic and Mosaic Tile: ranging from maintenance such as repairing broken tiles to projects such as a bathroom remodel.
6. Plumbing: ranging from maintenance such as replacing a faucet to a project such as a bathroom remodel.
7. Electrical: ranging from maintenance such as replacing light switches to projects such as installing an electrical panel or re-wiring a house.
8. Concrete and Masonry: ranging from repairing a sidewalk or walkway or bricklaying
9. Painting: ranging from minor patch and paint to paint a room or entire building.
10. Roofing: ranging from maintenance such as a roof patch or repairing the fascia to a project such as a new residential roof
11. Sheet Metal and Welding: as needed to support projects

12. Flooring: ranging from maintenance such as repairing tiles or tears in flooring to projects such as replacing floor joists and installing new flooring
13. Asbestos and Hazardous Substance Abatement: as needed per project¹

Attachment: Weston Miles Agreement (2708 : On Call GC contracts)

¹ Prior to commencement of any work involving asbestos and/or hazardous substance abatement, contractor will provide evidence of proper license and/or certification (ASB or HAZ) if required by the State of California. Further, contractor may be required to provide evidence of pollution liability insurance prior to commencing work if City Risk Manager determines the project warrants such coverage.

**CITY OF MORGAN HILL
ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS
Valenti Builders, Inc.**

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Valenti Builders, Inc. a (corporation, LLC) ("Contractor") effective as of March 30, 2020.

The parties agree as follows:

1. Scope of Services. The Scope of Services attached as Exhibit A to this Contract provides for the general scope of and type of work to be performed by Contractor. When City identifies a project, City shall request a proposal from Contractor (Proposal Request Worksheet) based on the Scope of Services. Contractor shall provide a proposal within the number of days specified by City in its request. City and Contractor may negotiate the cost and scope. Upon receipt of a written notice to proceed, Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's proposal, subject to the direction of the City through its staff that it may provide from time to time. A Change Order shall be prepared as provided in the General Conditions for changes in scope, price, or time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call support on an as needed basis.

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the following, and the definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, unless otherwise indicated:

- 2.1** Contract;
- 2.2** Payment and Performance Bonds (if Work Order exceeds \$25,000);
- 2.3** Special Conditions;
- 2.4** General Conditions;
- 2.5** Change Orders, if any;
- 2.6** Notice to Proceed (via email);
- 2.7** The following developed for each project: Proposal Request Worksheet ("Contractor's Proposal"), On-Call Construction Work Order ("Work Order")

3. Time for Performance.

- a. Time of Essence.** Time is of the essence in the performance of this Contract. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Contract. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Contract consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.
- b. Performance Schedule.** Contractor shall commence the services and related work pursuant to this Contract upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the Work Order/Contractor's Proposal. When requested by Contractor, extensions to

the time period(s) specified may be approved in writing by the City Manager through a Change Order.

- c. **Term and Compliance with Work Order.** Unless earlier terminated as provided elsewhere in this Contract, this Contract shall continue in full force and effect for a period of two (2) years, commencing on the Effective Date. The City may, at its sole discretion, extend the term of this Contract on a 12-month basis not to exceed three (3) additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager. Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Contract shall be based upon the issuance of a Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a task/work order and minor construction agreement issued by the City.

4. **Compensation and Payment.**

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates in each Proposal Request Worksheet submitted by the Contractor and accepted by the City in the form of an issued Work Order. In no event shall Contractor's compensation exceed two hundred thousand dollars (\$200,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

5. Termination. City or Contractor shall have the right to terminate this Contract, without cause, by giving thirty (30) days' written notice, or less under urgent circumstances. Upon such termination, Contractor shall submit to City an itemized statement of services performed for which compensation has not been paid. City may require Contractor to complete certain work. Upon receipt of such notice, the Contractor shall immediately cease all work under this Contract, unless the notice provides otherwise. If the City suspends or terminates a portion of this Contract such suspension or termination shall not make void or invalidate the remainder of this Contract. The City Manager is authorized to terminate this Contract on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Contract. Contractor shall therefore provide properly skilled personnel to perform all services under this Contract. All work performed by Contractor, its employees, or its Subcontractors, under this Contract shall be in accordance with applicable legal

requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

7. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Morgan Hill business license.

8. Contractor's Obligations. Contractor must provide an executed copy of the Contract within ten (10) days of receipt of the Notice of Award email. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

8.1 Bonds. For any Work Order more than Twenty-Five Thousand Dollars (\$25,000.00), within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work on the Project, Contractor must submit a payment bond and a performance bond, each for one hundred percent (100%) of the Work Order price, using the bond forms provided and in accordance with the requirements of the Contract Documents. Contractor may not proceed with the Work until City has approved the bonds.

8.2 Insurance. Contractor must provide the required insurance certificates and endorsements within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work.

8.3 If the performance of Contractor's work or service under this Contract for a specific Work Order involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering 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 Contract as described in the General Conditions.

9. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

10. Labor Code Compliance.

13.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party.

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

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

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

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

VALENTI BUILDERS, INC.

 Signature

 Name/Title [print] **Jim A. Valenti III**
Chief Financial Officer

Date: 3-30-20

Corporate entities must provide a second signature:

 Signature

 Name/Title [print] **James A. Valenti IV (RMO)**
President

Date: 03-30-20

932279
 Contractor's License Number(s)

05/31/2021
 Expiration Date(s)

Seal:

1000050818
 Contractor's DIR Registration Number(s)
 (if applicable)

06-30-20
 Expiration Date

On-Call General Contractor
 CSD2020-057

ON-CALL CONTRACT
 Page 6
 Version: January 2020

Attachment: Valenti Builders Agreement [Revision 1] (2708 : On Call GC contracts)

**CITY OF MORGAN HILL
CONTRACT
FOR PUBLIC WORKS PROJECTS
Valenti Builders, Inc.**

ATTACHMENT A

The following documents are attached and made part of the Contract Documents:

X Project Scope of Work

The scope of work includes construction and repair services for City buildings and facilities on an on-call basis.

On-call projects will be initiated by issuing a Request Proposal Worksheet describing the scope of work to the on-call general contractors. A Work Order will be issued to the selected general contractor to initiate work on a specific project.

It is anticipated that the on-call general contractor's scope of work and if appropriate, their subcontractor's scope of work may entail construction in any area including:

1. Framing and Rough Carpentry: ranging from the building of small enclosures to dry rot repair to structural construction including items such as decks
2. Finish Carpentry: as needed to support projects
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4. Glazing: ranging from maintenance such as replacing glass in a window to projects such as replacing all windows/doors in a residence.
5. Ceramic and Mosaic Tile: ranging from maintenance such as repairing broken tiles to projects such as a bathroom remodel.
6. Plumbing: ranging from maintenance such as replacing a faucet to a project such as a bathroom remodel.
7. Electrical: ranging from maintenance such as replacing light switches to projects such as installing an electrical panel or re-wiring a house.
8. Concrete and Masonry: ranging from repairing a sidewalk or walkway or bricklaying
9. Painting: ranging from minor patch and paint to paint a room or entire building.
10. Roofing: ranging from maintenance such as a roof patch or repairing the fascia to a project such as a new residential roof
11. Sheet Metal and Welding: as needed to support projects

12. Flooring: ranging from maintenance such as repairing tiles or tears in flooring to projects such as replacing floor joists and installing new flooring
13. Asbestos and Hazardous Substance Abatement: as needed per project¹

¹ Prior to commencement of any work involving asbestos and/or hazardous substance abatement, contractor will provide evidence of proper license and/or certification (ASB or HAZ) if required by the State of California. Further, contractor may be required to provide evidence of pollution liability insurance prior to commencing work if City Risk Manager determines the project warrants such coverage.

**CITY OF MORGAN HILL
ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS
Castlewood Construction Company, Inc.**

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Castlewood Construction Company, Inc. a (corporation, LLC) ("Contractor") effective as of _____, 2020.

The parties agree as follows:

1. Scope of Services. The Scope of Services attached as Exhibit A to this Contract provides for the general scope of and type of work to be performed by Contractor. When City identifies a project, City shall request a proposal from Contractor (Proposal Request Worksheet) based on the Scope of Services. Contractor shall provide a proposal within the number of days specified by City in its request. City and Contractor may negotiate the cost and scope. Upon receipt of a written notice to proceed, Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's proposal, subject to the direction of the City through its staff that it may provide from time to time. A Change Order shall be prepared as provided in the General Conditions for changes in scope, price, or time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call support on an as needed basis.

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the following, and the definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, unless otherwise indicated:

- 2.1** Contract;
- 2.2** Payment and Performance Bonds (if Work Order exceeds \$25,000);
- 2.3** Special Conditions;
- 2.4** General Conditions;
- 2.5** Change Orders, if any;
- 2.6** Notice to Proceed (via email);
- 2.7** The following developed for each project: Proposal Request Worksheet ("Contractor's Proposal"), On-Call Construction Work Order ("Work Order")

3. Time for Performance.

- a. **Time of Essence.** Time is of the essence in the performance of this Contract. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Contract. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Contract consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.
- b. **Performance Schedule.** Contractor shall commence the services and related work pursuant to this Contract upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the

Work Order/Contractor's Proposal. When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager through a Change Order.

- c. **Term and Compliance with Work Order.** Unless earlier terminated as provided elsewhere in this Contract, this Contract shall continue in full force and effect for a period of two (2) years, commencing on the Effective Date. The City may, at its sole discretion, extend the term of this Contract on a 12-month basis not to exceed three (3) additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager. Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Contract shall be based upon the issuance of a Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a task/work order and minor construction agreement issued by the City.

4. Compensation and Payment.

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates in each Proposal Request Worksheet submitted by the Contractor and accepted by the City in the form of an issued Work Order. In no event shall Contractor's compensation exceed two hundred thousand dollars (\$200,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

5. Termination. City or Contractor shall have the right to terminate this Contract, without cause, by giving thirty (30) days' written notice, or less under urgent circumstances. Upon such termination, Contractor shall submit to City an itemized statement of services performed for which compensation has not been paid. City may require Contractor to complete certain work. Upon receipt of such notice, the Contractor shall immediately cease all work under this Contract, unless the notice provides otherwise. If the City suspends or terminates a portion of this Contract such suspension or termination shall not make void or invalidate the remainder of this Contract. The City Manager is authorized to terminate this Contract on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Contract. Contractor shall therefore provide properly skilled personnel to perform all services under this Contract. All work performed by Contractor, its employees, or its Subcontractors, under this Contract shall be in accordance with applicable legal

requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

7. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Morgan Hill business license.

8. Contractor's Obligations. Contractor must provide an executed copy of the Contract within ten (10) days of receipt of the Notice of Award email. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

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8.3 If the performance of Contractor's work or service under this Contract for a specific Work Order involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering 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 Contract as described in the General Conditions.

9. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

10. Labor Code Compliance.

- 10.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 10.2 Prevailing Wages.** Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 10.3 DIR Registration.** City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
- 10.4 Wage Theft Prevention.** All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.
- 11. Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 12. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Cynthia Iwanaga/Management Analyst	Nick Cortese, President Castlewood Construction Company, Inc.
Address	17575 Peak Avenue	835 West San Martin Avenue
City/state/zip	Morgan Hill, California 95037	San Martin, California 95046
Phone		(408) 887-3294
Fax		
Email	Michelle.bigelow@morganhill.ca.gov	castlewoodinc@att.net
Copy to:	Cynthia.iwanaga@morganhill.ca.gov	

13. General Provisions.

- 13.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 13.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 13.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court for Santa Clara County, and no other place.
- 13.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 13.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

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

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

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

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:
 CASTLEWOOD CONSTRUCTION
 COMPANY, INC.

 Signature

NICK CORTIESTE PRESIDENT
 Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

 Signature

Rosetta Cortese, Secretary
 Name/Title [print]

Date: _____

343791
 Contractor's License Number(s)

03/31/2021
 Expiration Date(s)

Seal:

1000018054
 Contractor's DIR Registration Number(s)
 (if applicable)

06/30/2020
 Expiration Date

**CITY OF MORGAN HILL
CONTRACT
FOR PUBLIC WORKS PROJECTS
Castlewood Construction Company, Inc.**

ATTACHMENT A

The following documents are attached and made part of the Contract Documents:

X Project Scope of Work

The scope of work includes construction and repair services for City buildings and facilities on an on-call basis.

On-call projects will be initiated by issuing a Request Proposal Worksheet describing the scope of work to the on-call general contractors. A Work Order will be issued to the selected general contractor to initiate work on a specific project.

It is anticipated that the on-call general contractor's scope of work and if appropriate, their subcontractor's scope of work may entail construction in any area including:

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2. Finish Carpentry: as needed to support projects
3. Drywall, Lathing and Plastering: ranging from maintenance such as repairing damaged sections of wall to a project such as new wall construction
4. Glazing: ranging from maintenance such as replacing glass in a window to projects such as replacing all windows/doors in a residence.
5. Ceramic and Mosaic Tile: ranging from maintenance such as repairing broken tiles to projects such as a bathroom remodel.
6. Plumbing: ranging from maintenance such as replacing a faucet to a project such as a bathroom remodel.
7. Electrical: ranging from maintenance such as replacing light switches to projects such as installing an electrical panel or re-wiring a house.
8. Concrete and Masonry: ranging from repairing a sidewalk or walkway or bricklaying
9. Painting: ranging from minor patch and paint to paint a room or entire building.
10. Roofing: ranging from maintenance such as a roof patch or repairing the fascia to a project such as a new residential roof
11. Sheet Metal and Welding: as needed to support projects

12. Flooring: ranging from maintenance such as repairing tiles or tears in flooring to projects such as replacing floor joists and installing new flooring
13. Asbestos and Hazardous Substance Abatement: as needed per project¹

¹ Prior to commencement of any work involving asbestos and/or hazardous substance abatement, contractor will provide evidence of proper license and/or certification (ASB or HAZ) if required by the State of California. Further, contractor may be required to provide evidence of pollution liability insurance prior to commencing work if City Risk Manager determines the project warrants such coverage.

**CITY OF MORGAN HILL
ON-CALL CONTRACT FOR PUBLIC WORKS PROJECTS
Tucker Construction, Inc.**

This on-call public works contract ("Contract") is entered into by and between the City of Morgan Hill, a municipal corporation ("City") and Tucker Construction, Inc. a (corporation, LLC) ("Contractor") effective as of _____, 2020.

The parties agree as follows:

1. **Scope of Services.** The Scope of Services attached as Exhibit A to this Contract provides for the general scope of and type of work to be performed by Contractor. When City identifies a project, City shall request a proposal from Contractor (Proposal Request Worksheet) based on the Scope of Services. Contractor shall provide a proposal within the number of days specified by City in its request. City and Contractor may negotiate the cost and scope. Upon receipt of a written notice to proceed, Contractor shall provide such services and related work at the time, place, and in the manner specified in Contractor's proposal, subject to the direction of the City through its staff that it may provide from time to time. A Change Order shall be prepared as provided in the General Conditions for changes in scope, price, or time. Contractor acknowledges that the Scope of Services provides for 24 hour-a-day, 7 day-a-week, on-call support on an as needed basis.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following, and the definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, unless otherwise indicated:
 - 2.1 Contract;
 - 2.2 Payment and Performance Bonds (if Work Order exceeds \$25,000);
 - 2.3 Special Conditions;
 - 2.4 General Conditions;
 - 2.5 Change Orders, if any;
 - 2.6 Notice to Proceed (via email);
 - 2.7 The following developed for each project: Proposal Request Worksheet ("Contractor's Proposal"), On-Call Construction Work Order ("Work Order")
3. **Time for Performance.**
 - a. **Time of Essence.** Time is of the essence in the performance of this Contract. The time for completion of the services and related work to be performed by Contractor is an essential condition of this Contract. Contractor shall prosecute regularly and diligently the services and related work contemplated pursuant to this Contract consistent with Contractor's Proposal and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, bonds, utility and transportation services required to perform such the services and related work.
 - b. **Performance Schedule.** Contractor shall commence the services and related work pursuant to this Contract upon receipt of a written notice to proceed and shall perform all services and related work within the time period(s) established in the

Work Order/Contractor's Proposal. When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager through a Change Order.

- c. **Term and Compliance with Work Order.** Unless earlier terminated as provided elsewhere in this Contract, this Contract shall continue in full force and effect for a period of two (2) years, commencing on the Effective Date. The City may, at its sole discretion, extend the term of this Contract on a 12-month basis not to exceed three (3) additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager. Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Contract shall be based upon the issuance of a Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a task/work order and minor construction agreement issued by the City.

4. **Compensation and Payment.**

- a. Compensation to be paid to Contractor shall be in accordance with the fees and rates in each Proposal Request Worksheet submitted by the Contractor and accepted by the City in the form of an issued Work Order. In no event shall Contractor's compensation exceed two hundred thousand dollars (\$200,000.00) without additional written authorization from the City. Payment by City under this Contract shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
- b. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by Work Order, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures.

5. Termination. City or Contractor shall have the right to terminate this Contract, without cause, by giving thirty (30) days' written notice, or less under urgent circumstances. Upon such termination, Contractor shall submit to City an itemized statement of services performed for which compensation has not been paid. City may require Contractor to complete certain work. Upon receipt of such notice, the Contractor shall immediately cease all work under this Contract, unless the notice provides otherwise. If the City suspends or terminates a portion of this Contract such suspension or termination shall not make void or invalidate the remainder of this Contract. The City Manager is authorized to terminate this Contract on behalf of City.

6. Ability of Contractor. City has relied upon the training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Contract. Contractor shall therefore provide properly skilled personnel to perform all services under this Contract. All work performed by Contractor, its employees, or its Subcontractors, under this Contract shall be in accordance with applicable legal

requirements and shall meet the standard of quality ordinarily to be expected of competent contractors in Contractor's field of expertise.

7. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Morgan Hill business license.

8. Contractor's Obligations. Contractor must provide an executed copy of the Contract within ten (10) days of receipt of the Notice of Award email. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

8.1 Bonds. For any Work Order more than Twenty-Five Thousand Dollars (\$25,000.00), within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work on the Project, Contractor must submit a payment bond and a performance bond, each for one hundred percent (100%) of the Work Order price, using the bond forms provided and in accordance with the requirements of the Contract Documents. Contractor may not proceed with the Work until City has approved the bonds.

8.2 Insurance. Contractor must provide the required insurance certificates and endorsements within ten (10) days following receipt of the Notice of Award email from City, and before beginning any Work.

8.3 If the performance of Contractor's work or service under this Contract for a specific Work Order involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering 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 Contract as described in the General Conditions.

9. Liquidated Damages. If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of five hundred dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

10. Labor Code Compliance.

- 10.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours, and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 10.2 Prevailing Wages.** Any Work order over \$1,000 is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 10.3 DIR Registration.** City will not enter into the Contract with a Contractor, without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code Section 1725.5, subject to limited legal exceptions.
- 10.4 Wage Theft Prevention.** All Contractors are expected to have read and understand the "Wage Theft Prevention Policy" adopted by the City Council on July 26, 2017 as further described section 9.6 in the General Conditions.
- 11. Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 12. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name/Title	Cynthia Iwanaga/Management Analyst	Mark Tucker, President Tucker Construction, Inc.
Address	17575 Peak Avenue	1725-D Little Orchard Street
City/state/zip	Morgan Hill, California 95037	San Jose, California 95125
Phone		(408) 287-1424
Fax		
Email	Michelle.bigelow@morganhill.ca.gov	tucker@tuckercon.com
Copy to:	Cynthia.iwanaga@morganhill.ca.gov	

13. General Provisions.

- 13.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 13.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 13.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court for Santa Clara County, and no other place.
- 13.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 13.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

- 13.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party.

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

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

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

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

TUCKER CONSTRUCTION, INC.

 Mark Tucker

Signature

Mark Tucker, President

Name/Title [print]

Date: **March 30, 2020**

Corporate entities must provide a second signature:

 Mark Tucker

Signature

Mark Tucker, Secretary

Name/Title [print]

Date: **March 30, 2020**

454738

Contractor's License Number(s)

03/31/2022

Expiration Date(s)

Seal:

1000006784

Contractor's DIR Registration Number(s)
 (if applicable)

6/30/2022

Expiration Date

**CITY OF MORGAN HILL
CONTRACT
FOR PUBLIC WORKS PROJECTS
Tucker Construction, Inc.**

ATTACHMENT A

The following documents are attached and made part of the Contract Documents:

X Project Scope of Work

The scope of work includes construction and repair services for City buildings and facilities on an on-call basis.

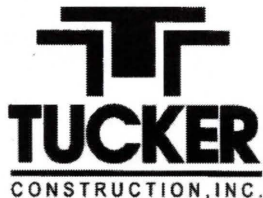
On-call projects will be initiated by issuing a Request Proposal Worksheet describing the scope of work to the on-call general contractors. A Work Order will be issued to the selected general contractor to initiate work on a specific project.

It is anticipated that the on-call general contractor's scope of work and if appropriate, their subcontractor's scope of work may entail construction in any area including:

1. Framing and Rough Carpentry: ranging from the building of small enclosures to dry rot repair to structural construction including items such as decks
2. Finish Carpentry: as needed to support projects
3. Drywall, Lathing and Plastering: ranging from maintenance such as repairing damaged sections of wall to a project such as new wall construction
4. Glazing: ranging from maintenance such as replacing glass in a window to projects such as replacing all windows/doors in a residence.
5. Ceramic and Mosaic Tile: ranging from maintenance such as repairing broken tiles to projects such as a bathroom remodel.
6. Plumbing: ranging from maintenance such as replacing a faucet to a project such as a bathroom remodel.
7. Electrical: ranging from maintenance such as replacing light switches to projects such as installing an electrical panel or re-wiring a house.
8. Concrete and Masonry: ranging from repairing a sidewalk or walkway or bricklaying
9. Painting: ranging from minor patch and paint to paint a room or entire building.
10. Roofing: ranging from maintenance such as a roof patch or repairing the fascia to a project such as a new residential roof
11. Sheet Metal and Welding: as needed to support projects

12. Flooring: ranging from maintenance such as repairing tiles or tears in flooring to projects such as replacing floor joists and installing new flooring
13. Asbestos and Hazardous Substance Abatement: as needed per project¹

¹ Prior to commencement of any work involving asbestos and/or hazardous substance abatement, contractor will provide evidence of proper license and/or certification (ASB or HAZ) if required by the State of California. Further, contractor may be required to provide evidence of pollution liability insurance prior to commencing work if City Risk Manager determines the project warrants such coverage.



1725-D Little Orchard Street • San Jose • CA 95125
 Phone: 408.287.1424 • Fax: 408.287.1448

CA Lic. # 454738

CERTIFICATION BY SECRETARY OF CORPORATE RESOLUTION

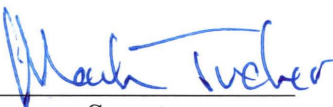
At the meeting of the Directors of Tucker Construction Inc., a corporation organized and existing under the laws of the State of California, duly called and held in accordance with the articles of incorporation and bylaws of the corporation at its office on January 3, 2020 at which a quorum of the directors was present the following resolution was adopted to wit:

Resolved, that Mark D Tucker, President, Secretary, Treasurer and/or Martin A. Tucker, Vice-President is/are hereby authorized to sign contracts/agreements in the name of and on behalf of Tucker Construction Inc.

I, Mark D. Tucker, Secretary of Tucker Construction Inc., do hereby certify that I am the Secretary of said corporation and that the above is a full, true, and correct copy of a resolution of the Board of Directors of said corporation, duly adopted at the meeting held on January 3, 2020 and that said resolution has not been revoked or rescinded.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said corporation.

Date: January 3, 2020


 Secretary

Attachment: Tucker Construction Agreement [Revision 1] (2708 : On Call GC contracts)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

PREPARED BY: Inga Alonzo, Management Analyst
APPROVED BY: City Manager

APPROVE FIRST AMENDMENT TO GENERATOR MAINTENANCE SERVICES AGREEMENT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer an amendment to increase the not to exceed amount by \$25,000 for the current service maintenance agreement with Got Power, Inc. dba CD & Power for a total contract amount of \$144,475 for generator maintenance and repair services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan
Water System Master Plan

REPORT NARRATIVE:

The City's fleet of generators provide electrical power backup for well sites, booster stations, water storage tanks, sewer lift stations, and other City facilities. Maintaining the constant readiness of these generators requires annual servicing, ongoing repair, parts (as needed), preventive maintenance, rentals for equipment downtime, and a three-year rotational servicing schedule. A Request for Proposals (RFP) was distributed in August 2017 to select a service provider for these services. The City received two responsive proposals for which Got Power was the lowest responsive bid.

At the time the agreement was prepared, the not to exceed amount was calculated based on response to routine annual service maintenance and preventive three-year maintenance schedules. The agreement did not include a contingency for unforeseen events such as emergency repairs and rental needs during the contract term. The two Public Power Safety Shutoff's (PSPS) events resulted in more repairs and short-term equipment rental than expected causing us to reach the not to exceed amount before the contract expires on June 30th. The \$25,000 increase recommended here would provide the amount needed to finish the current year's routine annual and preventive maintenance services and allow staff time to get a new service agreement in place starting in the fiscal year 2020-21.

COMMUNITY ENGAGEMENT: Inform

Equipment maintenance and repair services within the Engineering and Utilities Department are a necessary function to support basic operations of the City and therefore no community engagement was performed.

ALTERNATIVE ACTIONS:

City Council could decide to approve the payment of current invoices, terminate the agreement and direct staff to solicit new bids for the remainder of this fiscal year.

Generators are required to provide back-up power to water and wastewater facilities as well as City facilities in the event of a power outage and are necessary for the provision of essential services to the community. Ongoing maintenance and repair are crucial in assuring the generators are functioning properly at all times.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On October 4, 2017, Council approved an agreement with Got Power, Inc for generator maintenance services in the amount of \$119,475.

FISCAL/RESOURCE IMPACT:

Sufficient funding for this amendment is available within Water Operations (61%, Fund 650) and Sewer Operations (39%, Fund 640). No further appropriation of funds is necessary.

CEQA (California Environmental Quality Act)

Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Got Power dba CD Power First Amendment (002)

FIRST AMENDMENT TO AGREEMENT GOT POWER, INC. DBA CD & POWER

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and GOT POWER, INC. dba CD & POWER, a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of October 13, 2017, for services for a maximum compensation of one hundred nineteen thousand four hundred seventy-five dollars (\$119,475) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE 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 ONE HUNDRED FORTY-FOUR THOUSAND FOUR HUNDRED SEVENTY-FIVE DOLLARS (\$144,475) 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 SERVICE PROVIDER 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 SERVICE PROVIDER for one year of service during the initial term of this Agreement, unless otherwise authorized by City Council."

B. Paragraph 5 shall be amended and replaced in its entirety as follows:

"5. **Termination.** CITY or SERVICE PROVIDER 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, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional

compensation to SERVICE PROVIDER. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY."

C. Paragraph 8.2.2 shall be amended and replaced in its entirety as follows:

"8.2.2 Workers Compensation.

If the performance of SERVICE PROVIDER'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, SERVICE PROVIDER'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers."

D. Paragraph 10 shall be amended and replaced in its entirety by the following:

"10. Compliance with Law.

10.1. SERVICE PROVIDER 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. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, 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 SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER 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 SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER 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 SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SERVICE PROVIDER learns of such a judgment, decision, or order that was not previously disclosed, SERVICE PROVIDER 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. SERVICE PROVIDER 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. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where SERVICE PROVIDER 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, CITY reserves the right to withhold payment to SERVICE PROVIDER until such judgment, decision or order has been satisfied in full.

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

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

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

GOT POWER, INC. DBA CD & POWER

Donald A. Larkin, City Attorney

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

By: _____

Title: _____

Print Name and Title of Signer.

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

Date: _____

**MAINTENANCE SERVICE AGREEMENT
CD & POWER**

THIS AGREEMENT is entered into and becomes effective on 10/13/17 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and GOT POWER, INC. dba CD & POWER a California corporation ("SERVICE PROVIDER") 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 October, 4, 2017.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 at which time SERVICE PROVIDER'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 SERVICE PROVIDER shall be Generator Maintenance Services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$119,475.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed One-Hundred Nineteen Thousand Four-Hundred Seventy-Five 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 SERVICE PROVIDER 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 SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. 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 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 SERVICE PROVIDER 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, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product

or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER 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. The 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 SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the 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 SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

8. **Insurance Requirements.** SERVICE PROVIDER 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 SERVICE PROVIDER, 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. SERVICE PROVIDER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of CITY.

8.1. **Insurance Types and Amounts.**

8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.2. **Automobile Liability.** SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own

automobiles, then SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER'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, SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5. Professional Liability.

8.1.5.1. If the performance of SERVICE PROVIDER'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), SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this Agreement.

8.1.5.2. If the performance of SERVICE PROVIDER'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), SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

8.2.1. **General Liability.**

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

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

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

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

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

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with 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

9. **Non-Liability of Officials and Employees of CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
10. **Compliance with Law.**
 - 10.1. SERVICE PROVIDER 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. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
 - 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
 - 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **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 SERVICE PROVIDER is as follows:

CD & Power
150 Nardi Lane
Martinez, CA 94553

Address of CITY is as follows:

Engineering & Utilities Dept.	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

15. **Licenses, Permits and Fees.** SERVICE PROVIDER 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.

16. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER 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. SERVICE PROVIDER 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 SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER 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 CITY or as part of any audit of 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 SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER'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 SERVICE PROVIDER, 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.** SERVICE PROVIDER 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 SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** SERVICE PROVIDER 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 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 SERVICE PROVIDER.

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER'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 SERVICE PROVIDER 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 SERVICE PROVIDER. 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 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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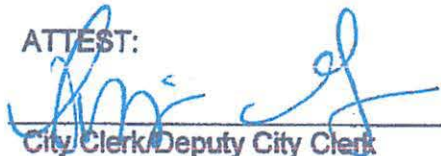
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

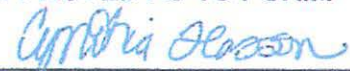
ATTEST:


City Clerk/Deputy City Clerk

 Michelle Wilson
Print Name

Date: 10/17/17

APPROVED AS TO FORM:


City Attorney

 Donald A. Larkin
Print Name

Date: 10-12-17

757162
Contractor's License Number(s) (if applicable)

Expiration Date(s) 12-31-18

Seal:

P:\Forms\Consultant Agreements\City Maintenance Service Agreement 10-5-15.Docx

CITY OF MORGAN HILL


City Manager

~~Steve Rymer~~ Christina Turner
Print Name

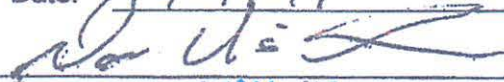
Date: 10/13/17

CD & Power


By: JULIE COLLARO

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

Date: 9-19-17


By: DON WUSCHNER

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

Date: 9-19-17

EXHIBIT A SCOPE OF SERVICES

Service Provider will conduct annual service, rotational preventive maintenance, and emergency repairs to the City's 26 generators. The Service Provider will be responsible for furnishing any and all labor, machine shop work, field work, shop and field welding, miscellaneous repair, travel time, expenses, and equipment necessary to do the work required.

ANNUAL SERVICE Includes a full inspection, changing oil, oil filters, fuel filters, testing the coolant for conditioner and antifreeze levels, disposal of fluids/filters, performing a full resistive load test and completing the City's Inspection sheet. The Preventive Maintenance Service is a 3 year rotational program.

The Preventive Maintenance three year rotational service includes:

- A) Replacement of Fan and Alternator Drive Belts**
- B) Replacement of Engine Cooling System Hoses**
- C) Block Heater hoses replaced with high temperature Silicon Hose**
- D) Replacement of Standard Ethylene Glycol Coolant**

Emergency Services include:

- 1. Provide directory and updates of all emergency phone numbers.**
- 2. Provide 24 hour emergency repair coverage.**
- 3. Provide an emergency generator in the event repairs cannot be made at the site.**

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

See Attached

W18013	PORTABLE TRAILER	17002 MURPHY AVE	BLUE STAR					
		NORDSTROM WELL	VD150-02FT4	L-10981	2016	150	\$	1500
W05020	HOLIDAY RESERVOIR	3100 LAKEVIEW CT.	KOHLER 10R0Z	2037908	2005	10	\$	900
W08023	PORTABLE TRAILER	490 LLAGAS RD						
		LLAGAS BOOSTER*	KOHLER	2259122	2009	150	\$	1500
Gen #813	DUNN HILL FIRE STATION	2100 EAST DUNNE AVE	OLYMPIAN #95a02228-S	2020473	1995	17.5	\$	900
Gen #822	EL TORO FIRE STATION	18300 OLD MONTEREY RD	OLYMPIAN #95a04133-S	2022956	1995	50	\$	1075
	NEW GENERATOR						\$	
	NEW GENERATOR						\$	
					ANNUAL TOTAL 32,090			
					3 YEAR AGREEMENT X3			
					TOTAL 96,270			

* Locations change on portable units.

EXHIBIT B

The Preventive Maintenance Service is a 3-year rotational program (PM-3).

The PM-3 Service includes:

- A) Replacement of Fan and Alternator Drive Belts
- B) Replacement of Engine Cooling System Hoses
- C) Block Heater hoses replaced with high temperature Silicon Hose
- D) Replacement of Standard Ethylene Glycol Coolant

	FY 17/18	FY 18/19	FY 19/20
1	B01002	B85001	B89004
2	S03008	S03018	S04019
3	W01018	W05020	S08021
4	W92008	W08022	S15010
5	S14009	W09023	S98003
6	W13007	W16005	W02017
7	W14011	B88042	W16013
8	W15012	B99013	W99014
9	Gen #813		
10	Gen #822		

Annual Total for Fiscal Year 17/18

\$ 9,325 ¹⁸

Annual Total for Fiscal Year 18/19

\$ 6,975 ¹⁹

Annual Total for Fiscal Year 19/20

\$ 6,905 ²⁰

TOTAL \$ 23,205 ²¹

EXHIBIT B

TOTAL COST

FOR GENERATOR MAINTENANCE SERVICES COMPRISING TOTALS FROM ANNUAL
SERVICE AND PM-3 INCLUDING ALL WORK SPECIFIED, COMPLETE:

Total ANNUAL	\$ 96,270 ⁰⁰
Total PM-3	\$ 23,205 ⁰⁰
TOTAL	\$ 119,475 ⁰⁰

EXHIBIT B

Emergency Services

1. Contractor will provide directory and updates of all emergency phone numbers.
2. Contractor will provide 24-hour emergency repair coverage.
3. Contractor will provide an emergency generator in the event repairs cannot be made at the site.

Generator Rental Rates

GENERATOR

WEEKLY RATES THROUGH 2020

20 KW	\$ 383.33
36 KW	\$ 444.67
50 KW	\$ 521.33
60 KW	\$ 536.67
70 KW	\$ 552.00
80 KW	\$ 567.33
100 KW	\$ 601.07
150 KW	\$ 742.13
200 KW	\$ 895.47
250 KW	\$ 1,085.60
300 KW	\$ 1,422.93
350 KW	\$ 1,594.67
400 KW	\$ 2,208.00

EMERGENCY RESPONSE TIME TO THE CITY =

2 hours

Cabling and Labor for roll-out/roll-up is NOT included.

EXHIBIT B

GENERATOR REPAIR

Labor and equipment costs associated with generator repair.

FIELD SERVICE	RATE
SUPERVISOR	\$ 139 ⁰⁰ / HOUR
SERVICEMAN AND TRUCK	\$ 139 ⁰⁰ / HOUR
SERVICEMAN/HELPER/TRUCK	\$ 139 ⁰⁰ / HOUR
TRAVEL TIME	\$ 139 ⁰⁰ / HOUR
SHOP WORK	
SHOP LABOR	\$ 133 ⁰⁰ / HOUR
OVERTIME	
OVERTIME/MONDAY-FRIDAY	\$ 186 ⁰⁰ / HOUR
SATURDAY	\$ 186 ⁰⁰ / HOUR
SUNDAY	\$ 240 ⁰⁰ / HOUR
HOLIDAY	\$ 240 ⁰⁰ / HOUR
TRAVEL TIME	\$ 186 ⁰⁰ / HOUR

EMERGENCY RESPONSE TIME TO MORGAN HILL:

2 HOURS

AVAILABLE 24 HOURS: YES NO

EXHIBIT C SCHEDULE OF PERFORMANCE

The work will be of a non-emergency, scheduled nature between normal business hours of 7:00 AM to 3:30 PM. The work will consist of routine, on-call support to Utilities Division crews in the repair and maintenance of the City's generators. Routine maintenance services shall be performed on normal work days defined as non-holiday Mondays through Fridays, 7:00 AM through 3:30 PM during the months of October, November, and December.

Service Provider will be available on an on-call basis for emergency response as required in order to ensure uninterrupted service to the City's customers.

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, April 1, 2020 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC MEETINGS DURING THE COVID-19 VIRUS EMERGENCY

Public Participation:

In accordance with Executive Orders N-25-20, N-29-20, and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. The Order will be addressed in the following ways:

Members of the public may not physically attend meetings at the Morgan Hill City Council Chamber.

The City Council meeting will be live-streamed on Channel 17 and on the City's website. Members of the public may participate in the meeting remotely through an electronic meeting in the following ways; by either joining the electronic meeting at bit.ly/040120CCMTG and enter ID: 663 791 422 or by calling in (669) 900-9128 enter Meeting ID: 663 791 422#.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

CONTINUED PUBLIC HEARINGS

The public hearing regarding **The amendment of title 18 (Zoning), Division III (Residential Development Control System(RDCS)), of the Morgan Hill Municipal Code, by adding a section 18.156.180 (enforcement) to establish procedures for the limited enforcement or non-enforcement**

Minutes Acceptance: Minutes of Apr 1, 2020 7:00 PM (CONSENT CALENDAR)

of the Residential Development Control System (RDCS) while the Housing Crisis Act is in effect, that was publicly noticed for consideration by the City Council at this meeting has been continued to a date certain of April 15, 2020.

The item Environmental Assessment application EA2019-0017 and Improvement Agreement: Cochrane-Monument Land Company (TechCon Project) that was publicly noticed for consideration by the City Council at this meeting has been continued to a date certain of April 15, 2020.

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 joint meeting to order at 7:02 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Gonzalez called the roll.

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

DECLARATION OF POSTING AGENDA

Minutes Clerk Gonzalez declared the posting of the agenda.

PUBLIC COMMENT

Mayor Constantine opened the public comment at 7:03 p.m.

Hearing no requests to speak, the public comment was closed.

ADOPTION OF AGENDA

ADOPTING THE AGENDA AS POSTED

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

CITY COUNCIL ACTIONS

CONSENT CALENDAR

MOTION:

Approving Consent Calendar items five through seven.

Minutes Acceptance: Minutes of Apr 1, 2020 7:00 PM (CONSENT CALENDAR)

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

1. ITEM PULLED FROM CONSENT

2. ITEM PULLED FROM CONSENT

3. ITEM PULLED FROM CONSENT

4. RECEIVE REPORT REGARDING THE EXTENSION OF TERMS OF TWO (2) MEMBERS ON THE LIBRARY, CULTURE & ARTS COMMISSION; AND THREE (3) MEMBERS ON THE PARKS AND RECREATION COMMISSION

Recommendation:

1. Receive report; and
2. If desired, the Council can reappoint the two commissioners who have applied for reappointment.

5. APPROVE THE MARCH 18, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE MARCH 23, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

7. ITEM PULLED FROM CONSENT

ITEMS PULLED FROM CONSENT

1. DIRECT THE CITY MANAGER TO NEGOTIATE A BROADBAND AGREEMENT WITH WAVE BROADBAND

Recommendation:

Direct the City Manager to Negotiate a Dark Fiber Agreement with Wave Broadband for City internet and intranet connectivity.

Economic Development Manager John Lang presented the report.

Mayor Constantine opened the public comment at 7:47 p.m.

Joe Baranowski was called to speak

Hearing no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

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

2. FUNDING FOR MORGAN HILL MAGICAL BRIDGE PLAYGROUND

Recommendation:

Adopt resolution approving and authorizing the City Manager to execute and administer an agreement with the County of Santa Clara for the approval and transfer of \$150,000 from the County of Santa Clara Park Charter Fund for improvements associated with the Morgan Hill Magical Bridge Playground Project.

City Manager Christina Turner presented the report.

Mayor Constantine opened the public comment at 8:29 p.m.

Joe Baranowski was called to speak

Hearing no further requests to speak, the public comment was closed.

The meeting recessed at 8:40 p.m.

The meeting reconvened at 8:45 p.m.

MOTION:

Approving the recommended action.

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

3. PURCHASE OF AN ASPHALT TRUCK AND TRACK LOADER

Recommendation:

1. Approve purchase of an Asphalt Truck from Municipal Maintenance Equipment in the amount of \$238,911 through a Sourcewell cooperative bid contract;
2. Approve purchase of a Track Loader from Bobcat of Fremont in the amount of \$82,081 through a Sourcewell cooperative bid contract;
3. Adopt resolution amending the Fiscal Year 2019-20 budget to appropriate \$235,000 as expenditures, and \$37,200 as revenue, in the Equipment Replacement Fund (790);
4. Authorize the City Manager to approve both purchase orders totaling \$320,992;
5. Declare the current asphalt truck and woodchipper as surplus equipment; and
6. Authorize the disposal of the surplus equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

City Manager Christina Turner answered questions.

Mayor Constantine opened the public comment at 8:50 p.m.

Hearing no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

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

4. PURCHASE OF A NEW VACTOR COMBO TRUCK

Recommendation:

1. Approve purchase of a Vactor Combo Truck from Owen Equipment Company in the amount of \$511,590 through a Sourcewell cooperative bid contract;
2. Adopt resolution amending the Fiscal Year 2019-20 budget to appropriate \$350,000 from the Equipment Replacement Fund (790) to fully fund the purchase of the Vactor Combo Truck;
3. Authorize the City Manager to approve a purchase order for \$511,590 with Owen Equipment Company;
4. Declare the current combo truck, City vehicle S09166, as surplus; and
5. Authorize the disposal of the surplus truck in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

City Manager Christina Turner answered questions.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

8. REVIEW RESOLUTION RATIFYING EMERGENCY PROCLAMATION

Recommendation:

Reaffirm Council's ratification of the Director of Emergency Services proclamation of a local emergency on March 13, 2020.

City Manager Christina Turner and Economic Development Director Edith Ramirez presented the report.

Brittney Sherman with the Morgan Hill Chamber of Commerce, and Krista Rupp with Visit Morgan Hill, participated in the presentation.

MOTION:

Approving the recommended action.

RESULT: **ACCEPT REPORT**

MOTION:

Extending the meeting to 11:30 p.m.

RESULT: **EXTENDED [UNANIMOUS]**
MOVER: Rich Constantine, Mayor
SECONDER: Larry Carr, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay, Spring

SUCCESSOR AGENCY ACTIONS

OTHER BUSINESS

1. ADOPT RESOLUTION AUTHORIZING THE SALE AND ISSUANCE OF TAXABLE REFUNDING BONDS TO REFINANCE AT LOWER INTEREST RATES CERTAIN OUTSTANDING BONDS PREVIOUSLY ISSUED BY THE SUCCESSOR AGENCY

Recommendation:

Adopt resolution authorizing the sale and issuance of Tax Allocation Refunding Bonds to refinance at lower interest rates certain outstanding bonds previously issued by the Successor Agency.

Finance Director Dat Nguyen presented the report.

Mayor Constantine opened public comment at 11:12 p.m.
Hearing no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

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

FUTURE CITY COUNCIL INITIATED AGENDA ITEMS

Mayor Pro Tem Martínez Beltrán asked for an item providing financial assistance to small businesses. She also asked the City Attorney to look at doing an eviction and a rent ordinance.

Council Member McKay asked that staff look into what ordinances can be loosened up to help businesses recover by reducing fees or by eliminating or reducing some regulations.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the joint meeting at 11:19 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

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

ADOPT HOUSING CRISIS ACT OF 2019: SB 330 IMPLEMENTATION ORDINANCE

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Waive the first and second reading of the ordinance Implementing SB 330, Suspending Certain Growth Management Provisions of Residential Development Control System (RDCS) until January 1, 2025; and
3. Introduce ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

The Housing Crisis Act of 2019 (SB 330) made major modifications to the law regarding housing review and processing; specifically eliminating the City's ability to pace growth by permitting a certain number of units/allocations and to implement the General Plan population cap until January 1, 2025. This ordinance provides an opportunity to make the Morgan Hill Municipal Code, specifically Title 18, Zoning, consistent with State Housing Law.

REPORT NARRATIVE:

Morgan Hill's Residential Development Control System (RDCS)

The RDCS was first established by the City's voters in 1977, and it has been amended and extended multiple times since its adoption (Morgan Hill Municipal Code ("MHMC") § 18.156.010.B.). It was most recently updated and adopted as Measure S, a City-initiated ballot measure approved by the voters on November 8, 2016 that became effective on March 1, 2017. (Id.) In its current form, the RDCS limits residential growth in the City in two ways:

- (1) It establishes an absolute population cap of 58,200 through January 1, 2035. (Id. at § 18.156.040.A.)
- (2) It limits residential allotments to 215 per calendar year. (Id. at §18.156.050.A)

Under the RDCS, residential allotments are a prerequisite for applying for most land use entitlements and for constructing units, with some exceptions including a single-family home. Downtown projects, projects that contribute agricultural preservation set-asides, and 100 percent affordable projects are not required to compete, but still required to score based on the RDCS competition criteria. (RDCS Manual).

In addition to the growth control requirements, the RDCS requires the City Council to adopt and maintain a “competition manual” that establishes criteria to evaluate residential projects that have applied for residential allotments. (Id. at § 18.156.100.) Finally, the RDCS prohibits amendments without voter approval, except for specified sections (generally regarding administration and processing requirements). (Id. at § 18.156.020.)

ANALYSIS:

On October 9, 2019, Governor Gavin Newsom signed SB 330, known as the “Housing Crisis Act of 2019.” SB 330 prohibits cities and counties from implementing certain limits on the number of residential permits issued or enforcing population caps through January 1, 2025. In addition, SB 330 mandates sweeping, uniform processing of development applications to standardize processes statewide and provide development certainty to the development industry. These actions were taken to stimulate the construction of housing, at all affordability levels.

Accordingly, developers are entitled to seek City review and approval of residential projects of any size, at any point during the year, without first receiving allocation approval from the City, except in Very High Fire Hazard Severity Zones. In addition, it is possible, although not probable, that the City’s population could potentially exceed 58,200 which is the current growth cap established by the 2035 General Plan Update of 2016.

Although California voters’ right to adopt legislation by initiative, such as RDCS most recently by Measure S in 2016, is protected by the State Constitution and is “jealously guarded” by the courts, the state legislature retains the authority to preempt most local land use laws.

Indeed, SB 330 carries penalties for non-compliance with the Housing Crisis Act which are financially costly and created/given additional entities standing to help enforce/police the housing measure. Therefore, the City believes it must abide by SB 330 and suspend enforcement of the RDCS.

Provided is an ordinance (Attachment 1) with a recommendation from the Planning Commission that the City Council add a provision to the zoning code that states, consistent with the position the City has stated publicly, that the City will not enforce the Residential Development Control System while SB 330 is in effect except in Very High Fire Hazard Severity Zones.

SB 330 is currently scheduled to sunset on January 1, 2025. (Id. at § 66301.) Therefore, starting on January 1, 2025 (unless SB 330 is extended), the City could resume

enforcement of the RDCS and its growth cap. Accordingly, the City could resume requiring residential allotments before approving projects, and it would not be obligated to approve projects that would increase the City's population above 58,200 people.

ZONING ORDINANCE AND GENERAL PLAN CONSISTENCY:

This Ordinance was reviewed by the Planning Commission on March 10, at which time they made a finding of compliance with the Housing Crisis Act of 2019 and that State law preempts the City's ability to make findings as set forth in Municipal Code Sections 18.114.060; however, state law requires that the City review and approve projects in a manner consistent with the proposed amendment.

COMMUNITY ENGAGEMENT: Inform

In accordance with 18.104.090.B.2, official notice of this hearing was provided by placing a quarter page display advertisement in the Morgan Hill Times. Notice was also provided on the website and via social media. On March 10, the Planning Commission reviewed and provided a recommendation that the City Council approve the Ordinance.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission and City Council have taken many actions to prepare for the Implementation of SB 330, including suspending the 2020 Measure S Residential Development Growth Control (RDCS) Competition Manual review and development as well as the 2020 RDCS competition. In addition, the Planning Commission and City Council have approved Objective Development Design Criteria required of SB 330 and established a process for receiving applications for development and complying with the expedited review process demanded by the law. On March 10, the Planning Commission reviewed this Ordinance and recommended adoption to the City Council.

FISCAL AND RESOURCE IMPACT:

Adoption of this Ordinance will have no direct fiscal impact upon the community. The Adoption of SB 330 statewide was the vehicle which created impacts by diverting staff to non-cost recovery producing activities such as development of objective criteria and new processes to comply with the law. The cost of that staff time cannot be recovered from development permits. In addition, City will lose voluntary developer contributions to the various public benefit funds such as Park Maintenance, Agriculture and Open Space Preservation, Housing, School and Pedestrian Safety and other public facilities, which were used to fund maintenance operations or one time capital projects/infrastructure annually of approximately \$1 million. As a result, alternative funding sources, such as the General Fund, would likely need to backfill those maintenance or one-time capital projects at least for the duration of the RDCS suspension, unless SB 330 is extended indefinitely.

CEQA (California Environmental Quality Act):

The consideration/adoption of this Ordinance is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Sections

15061(b)(3) and as a ministerial action pursuant to Public Resources Code Section 21080(b)(1).

LINKS/ATTACHMENTS:

1. SB 330 CC Ordinance

ORDINANCE NO. ____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 18.156 (RESIDENTIAL
DEVELOPMENT CONTROL SYSTEM) OF TITLE 18
(ZONING) OF THE MUNICIPAL CODE OF THE CITY OF
MORGAN HILL BY ADDING A SECTION 18.156.180
(ENFORCEMENT) TO ESTABLISH PROCEDURES FOR
THE LIMITED ENFORCEMENT OR NON-
ENFORCEMENT OF THE RESIDENTIAL
DEVELOPMENT CONTROL SYSTEM (RDCS) WHILE
THE HOUSING CRISIS ACT IS IN EFFECT**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

Section 1. Findings Regarding the Housing Crisis Act of 2019. To comply with the Housing Crisis Act of 2019, the City Council finds as follows:

A. On October 9, 2019, Governor Newsom signed Senate Bill 330 (“SB 330”) into law effective as of January 1, 2020.

B. SB 330 enacted Government Code Section 66300, the “Housing Crisis Act of 2019.” Among other limitations on local authority, Section 66300(b)(1)(D) of the Housing Crisis Act prohibits affected cities from implementing limits on the number of residential permits issued through January 1, 2025.

C. Pursuant to Government Code Section 66300(e), the California State Department of Housing and Community Development (“HCD”) has determined that Morgan Hill is an “affected city” subject to the Housing Crisis Act.

D. Section 66300(a)(3) of the Housing Crisis Act expressly states that the Act applies to “the electorate of an affected county or city exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances” and requires that its provisions “be broadly construed so as to maximize the development of housing within this state.”

E. The City’s Residential Development Control System (the “RDCS”) was adopted by the voters through the initiative process and was most recently extended by a vote of the people called “Measure S” in 2016 and is codified as Morgan Hill Municipal Code Chapter 18.156.

F. The RDCS establishes an absolute population cap of 58,200 through January 1, 2035 and limits residential allotments to 215 per calendar year. The Housing Crisis Act is deemed to preempt, and preclude the enforcement of, these portions of the RDCS while the Housing Crisis Act is in effect.

G. The City Council of the City of Morgan Hill actively and aggressively opposed certain portions of SB 330, including the prohibition on caps on the number of housing units that may be approved or constructed annually and limits on population of the City under the RDCS, intending to preserve the growth control measures in place in the City of Morgan Hill since 1977.

H. Although Morgan Hill has already achieved more than four times the State-required amount of market rate residential development assigned via the most recent Regional Housing Needs Allocation process, affordable housing production remains a challenge in the City. The RDCS prevents market rate housing development from monopolizing available land in the City so that affordable housing developers have an opportunity to acquire sites and develop homes without competing directly with builders seeking to maximize their own profits.

I. The City of Morgan Hill has limited resources to invest in local infrastructure, such as streets, sewers, schools, and public safety. The RDCS helps meter growth to keep pace with available infrastructure while the City seeks financing mechanisms to provide necessary services to its residents.

J. The City Council of the City of Morgan Hill believes the State should provide more incentives and financial support for the development of affordable housing, and has offered suggestions to legislators regarding land dedication requirements for affordable housing production and additional funding for communities, such as Morgan Hill, that develop affordable housing but lose critical property tax revenue because of tax-exempt housing development.

K. The City Council of the City of Morgan Hill continues to be opposed to the loss of local control implemented through SB 330, and has serious concerns that the Housing Crisis Act will result in unintended consequences by incentivizing market rate housing development without making a meaningful contribution to the need for more affordable housing; but, the City Council recognizes that the cost to litigate against the State of California, and the significant challenges of successful litigation, would jeopardize the City's financial sustainability.

L. The City Council of the City of Morgan Hill will continue to invest City resources, including staff time, in discussions with the California Department of Housing and Community Development for additional guidance about how to best comply with state law requirements while advancing the goal of developing more affordable housing in the City and implementing the City's policies as adopted by a vote of the people to the greatest extent permissible under state law.

M. This Ordinance amends Title 18 (Zoning) of the City's Municipal Code to establish procedures for the limited enforcement or non-enforcement of the RDCS while the Housing Crisis Act is in effect.

N. The Planning Commission held a duly noticed public hearing as prescribed by law to consider adoption of this Ordinance on March 10, 2020.

O. On March 10, 2020, by Resolution No. 20-01, the Planning Commission recommended that the City Council adopt this Ordinance.

P. On April 15, 2020 the City Council held a duly noticed public hearing to consider this Ordinance.

Q. This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to the commonsense exemption set forth in Section 15061(b)(3) of the CEQA Guidelines. The common sense exemption provides that CEQA applies to projects that have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Here, the City’s action simply confirms that the City will review and process housing development projects in the manner prescribed by California law. Government Code Section 66300 would preempt enforcement of the RDCS even if the City did not adopt this Ordinance, and the City’s action does not approve any particular project or action that would have physical effects. Housing development projects will continue to be analyzed in compliance with CEQA as individual projects are proposed. The City’s adoption of the Ordinance has no direct or indirect physical impacts and simply conforms the City’s procedures to requirements defined by State law; therefore, it can be seen with certainty that the City’s action here will have no significant effect on the environment, and adoption of the Ordinance is exempt from CEQA.

R. Alternatively, the adoption of the Ordinance is a ministerial action that is not subject to CEQA in accordance with Public Resources Code Section 21080(b)(1). Under CEQA Guidelines Section 15002(f), CEQA only applies in situations where the City can use its judgment in deciding whether and how to carry out or approve a project; when the law requires the City to act in a set way without allowing the City to use its own judgement, the project is ministerial and CEQA does not apply. Government Code Section 66300 requires the City to act on housing development projects without applying the RDCS. Because the City has no discretion to refuse compliance with Government Code Section 66300 and the law precludes the City from applying its own judgement, compliance with Government Code Section 66300 is ministerial. Therefore, this Ordinance enacted to comply with Government Code Section 66300 is not subject to CEQA.

Section 2. Findings for Approval. In addition to the findings set forth in Section 1, Morgan Hill Municipal Code Section 18.114.060 includes three findings for the City Council to make in connection with text amendments to the City’s zoning code: that the proposed amendment is consistent with the general plan; that the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and that the proposed amendment is internally consistent with other applicable provisions of the zoning code. The City Council finds that Government Code section 66300 has preempted the City’s ability to enforce its policies with respect to managing growth as set forth in the General Plan and zoning code. The City Council further finds that; accordingly, state law preempts the City’s ability to make findings as set forth in Municipal Code Section 18.114.060; however, state law requires that the City review and approve projects in a manner consistent with this proposed amendment.

Section 3. Section 18.156.180 (Enforcement) is hereby added to Chapter 18.156 (Residential Development Control System) of Title 18 (Zoning) to read as follows:

18.156.180 – Enforcement.

- A. Purpose. This Section 18.156.180 establishes procedures (1) to comply with the Housing Crisis Act by determining not to enforce the City’s Residential Development Control System set forth in this Chapter 18.156 that conflict with Government Code Section 66300(b)(1)(D), and (2) for the processing and review of housing development projects while Government Code Section 66300 is in effect.
- B. As required by Government Code Section 66300(b)(1)(D)(iii), unless the housing development project is located within a very high fire hazard severity zone as defined in Government Code Section 51177, the City shall not deny an application for a housing development project on the basis of that project causing the City’s population to exceed the limit established in Section 18.156.040.
- C. As required by Government Code Section 66300(b)(1)(D)(i), unless the housing development project is located within a very high fire hazard severity zone as defined in Government Code Section 51177, the City shall not require a residential allotment to apply for land use entitlements or to construct a housing development project.
 - 1. The number of available allotments specified in Section 18.156.110 shall not limit the City’s ability to review or approve housing development projects, unless the housing development project is located within a very high fire hazard severity zone as defined in Government Code Section 51177.
 - 2. Unless the housing development project is located within a very high fire hazard severity zone as defined in Government Code Section 51177, an applicant shall not be required to submit an RDCS application under Section 18.156.120 or a pre-application under Section 18.156.130 prior to submitting an entitlement application for a housing development project.
- D. In lieu of applying standards in an RDCS competition manual developed pursuant to Section 18.156.100, all residential projects requiring a Design Permit under Section 18.108.040 shall be subject to the Residential Development Design and Development Standards set forth in Resolution No. 19-065 adopted by the City Council on December 18, 2019, as such may be amended from time to time by the City Council.
- E. Effective Dates and Repeal. This Section 18.156.180 shall take effect on [Month] [Day], 2020 and remain in effect so long as Chapter 12 of Division 1 of Title 7 of the California Government Code (the Housing Crisis Act of 2019) is in effect. This Section 18.156.180 is repealed and shall be of no further force and effect as of the date that the Housing Crisis Act of 2019 is repealed or otherwise invalidated by a court of competent jurisdiction in its entirety, or in part if Government Code Section 66300(b)(1)(D) is repealed, amended to permit implementation of the RDCS, or otherwise invalidated.

Section 4. **CEQA Compliance.** After reviewing and considering information in the record, including the staff report on this item, correspondence submitted to the City Clerk, and testimony at the public hearings on this item, and without limiting the City Council's findings that CEQA does not apply to the adoption of this Ordinance under Public Resources Code Section 21080(b)(1) because the City's compliance with the Housing Crisis Act of 2019 is a ministerial action, the City Council concluded that adoption of this Ordinance is exempt from CEQA under CEQA Guidelines Section 15061(b)(3). The City Council directs the City Manager to cause a Notice of Exemption to be filed with the Santa Clara Recorder in accordance with CEQA and the CEQA Guidelines.

Section 5. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 6. **Effective Date; Posting.** This Ordinance shall take effect on [Month] [Day], 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

Section 7. **Notice Pursuant to Government Code Section 65009.** Notice is given, pursuant to Government Code Section 65009, that any challenge of the Ordinance in court may be limited to raising only those issues raised by at the public hearings held on [Month] [Day], 2020 and [Month] [Day], 2020, or in written correspondence delivered to the City Council at, or prior to the public hearings on this Ordinance. The time within which judicial review must be sought of the action by the City Council enacting this Ordinance is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 15th DAY OF APRIL 2020, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 22ND DAY OF APRIL 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

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 22nd day of April 2020.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

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

APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2020

RECOMMENDATION(S)

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2020.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

The purpose of this report is to present Recology South Valley's (Recology) request for an adjustment in the maximum allowable solid waste rates charged within the City for City Council consideration and action.

One of the provisions of Recology's franchise agreement has historically been that service rate increases are based upon changes in the Consumer Price Index. With the amendment to the franchise agreement approved in 2014, rate amendments are now based on changes in both the Consumer Price Index and the price of compressed natural gas. The calculated rate adjustment requested this year for these factors is a 2.01% increase.

In accordance with their franchise agreement with the City, Recology submitted the attached timely request for a rate adjustment (Attachment 1) and staff has determined that Recology's rate application follows the formula prescribed in the amended franchise agreement. For residential customers, this 2.01% adjustment applied to the current, basic residential service rate of \$33.39 is \$.67 per month. With the approval of this adjustment, the maximum permitted monthly charge for flatland customers will be \$34.06 and the maximum permitted monthly charge for hillside customers will be \$37.05. For a business getting a 3-yard dumpster serviced once per week, the maximum allowable monthly rate will rise from \$367.30 to \$374.68.

As many customers are facing economic hardships currently due to the COVID-19 virus, it is worth noting that Recology is cooperating with requests from businesses to downsize or temporarily discontinue services and is not charging late fees, nor

discontinuing service, for residential customers. As always, customers eligible for lower rates on their PG&E bill can also obtain discounted solid waste services by simply showing Recology their discounted PG&E bill. In addition, it is worth noting that if a recession results in reductions in the consumer price index and fuel costs, it is entirely possible that next year's adjustment may result in a decrease in the maximum allowed rates.

One might ask if staff considered asking Recology to delay this rate adjustment. This idea was considered and rejected for the following reasons:

1. It is a very small increase. No-one is going to be able to truthfully say that a 67 cent a month increase impacted their ability to pay their bill.
2. Since Recology is almost certainly going to see an increase in uncollectable debt from people unable to pay their bills completely, it doesn't seem appropriate for the City to suggest that they take an additional revenue reduction at this time. Importantly, this adjustment is based on cost increases recorded last year and Recology has already paid these increased costs for a year. As noted above, the current economic challenge will be incorporated into the rate adjustment request in 2021.
3. If Recology was to defer the increase, all of the customers that don't have a reduction in their income will benefit equally with those that do. These "free riders" unnecessarily weaken Recology's financial position and their ability to accommodate people who do have reduced incomes and are unable to pay their bill.
4. Deferring the increase to a future year will require us to establish and monitor a "make-up" element in the future rates. This will generate a larger percentage increase in the future which will be objectionable to a larger number of people – even though it would be revenue neutral over time. This future higher increase is likely to be in on top of additional rate increases the City will need to introduce in 2021 to pay for the new organics recycling requirements mandated by the State.

It is recommended that the Council adopt the resolution (Attachment 2) increasing the maximum allowed rates for solid waste management services starting July 1, 2020.

COMMUNITY ENGAGEMENT: Inform

The community will be informed about the rate amendment via notices in the bills they receive from Recology.

ALTERNATIVE ACTIONS:

Not applicable as the City is contractually obligated to approve this amendment to the maximum rates for the normal annual adjustment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has evaluated solid waste rate adjustments annually for the past seventeen years. In 2014, the City Council approved an amendment to the franchise agreement which changed the formula for the annual process.

FISCAL AND RESOURCE IMPACT:

The City's annual franchise fee revenues will increase by approximately \$20,000 under the proposed rate adjustments. This increase will be incorporated into the City's budget and financial forecast. Franchise fee is a revenue source of the General Fund (010). Processing this application is an anticipated and included activity in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

This action will not result in physical changes to the environment and it is not a project under the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. 2020 rate application
2. Recology Rate Resolution 2020



February 24, 2020

Mr. Anthony Eulo
Program Administrator
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: July 2020 Rate Adjustment

Dear Anthony:

As outlined in section 6 of the Amended and Restated franchise agreement, we submit our request for a 2.01% adjustment to the collection rates effective July 1, 2020.

Section 6 (B) in the First Amendment describes using November to November index values for both the Consumer Price Index (CPI) for all Urban Consumers for the San Francisco/Oakland Metropolitan Area and the Department of Energy's Clean Cities Alternative Fuel Price Report.

The Bureau of Labor Statistics publishes the CPI index every other month; therefore, the CPI index is not published in November. Additionally, the Department of Energy publishes the Alternative Fuel Price Report in October and January, therefore November is not available. Both indices are available in October.

For consistency purposes, and to most closely match the original Franchise Agreement we have used the October 2018 to October 2019 indexes in both cases as we did last year.

Attached are the following exhibits:

Exhibit 1 - CPI Calculation

CPI calculation using the formula described section 6 of the Amendment and Restated franchise agreement. Using October 2018 to October 2019 indexes.

Exhibit 2 – CPI Documentation

A Copy of the printout from the U.S. Department of Labor - Bureau of Labor Statistics web site displaying the required values of the CPI calculation.

Exhibit 3 – Clean Cities Alternative Fuel Price Report Documentation

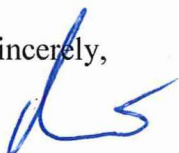
Table 6 compressed Natural Gas (relative to Diesel) West Coast report

Exhibit 4 – Rate Schedule

This table applies the CPI factor and Fuel index to the current rates and calculates the adjusted new rates for July 1, 2020.

Should you have any questions or need additional information, please call me at (408) 846-1395.

Sincerely,



Phil Couchee
General Manager
Recology South Valley

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATE ADJUSTMENT
EFFECTIVE JULY 1, 2020**

CPI RATE ADJUSTMENT

Formula outlined in Section 6 (B) First Amendment of
December 13, 2005 Franchise Agreement.

$$\frac{X (I) - X (I-2)}{X (I-2)}$$

Consumer Price Index Values

X (I) = October, 2019 = 298.443

X (I-2) = October, 2018 = 289.673

$$\text{CPI} = \frac{298.443 - 289.673}{289.673}$$

CPI = 3.03%

70% of CPI = 2.12%

**Pacific Gas & Electric's
G-NGV1 Schedule**

X (I) October 2019 2.82

X (I-2) October 2018 2.85

$$\text{MFI} = \frac{2.82 - 2.85}{2.85}$$

MFI = -1.05%

10% of MFI = -0.11%

Total rate adjustment

2.01%

Attachment: 2020 rate application [Revision 1] (2702 : Recology Rate Adjustment)

Data extracted on: February 20, 2020 (4:43:43 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS49BS20

Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2009		222.166		223.854		225.692		225.801		226.051		224.239	224.395	223.305	225.484
2010		226.145		227.697		228.110		227.954		228.107		227.658	227.469	226.994	227.944
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.698
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.201
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.152
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.463
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.421
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.777
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.542
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.435
2019		291.227		294.801		295.259		295.490		298.443		297.007	295.004	293.150	296.859

Compressed Natural Gas (CNG) Relative to Diesel

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$3.03	\$3.14	-\$0.11
Central Atlantic	\$2.53	\$2.89	-\$0.36
Lower Atlantic	\$2.37	\$2.93	-\$0.56
Midwest	\$2.33	\$2.95	-\$0.62
Gulf Coast	\$2.42	\$2.69	-\$0.27
Rocky Mountain	\$2.21	\$2.91	-\$0.70
West Coast	\$2.82	\$3.89	-\$1.07
NATIONAL AVERAGE	\$2.49	\$3.08	-\$0.59

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis between October 1 and October 15, 2019.

Compressed Natural Gas (Relative to Diesel)

TABLE 6
Compressed Natural Gas (CNG) and Diesel
Average Retail Prices by Region

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.90	\$3.32	-\$0.42
Central Atlantic	\$2.60	\$3.31	-\$0.71
Lower Atlantic	\$2.38	\$3.20	-\$0.82
Midwest	\$2.30	\$3.28	-\$0.98
Gulf Coast	\$2.38	\$2.99	-\$0.61
Rocky Mountain	\$2.15	\$3.24	-\$1.09
West Coast	\$2.85	\$3.98	-\$1.13
NATIONAL AVERAGE	\$2.48	\$3.36	-\$0.88

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis, between October 1 and October 15, 2018.

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2020

DESCRIPTION	Current Rates	Add Current 2.01%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	33.39	0.67	34.06
SGL FAM - NO STREET SWEEPING	32.98	0.66	33.64
HILLSIDE RESIDENTIAL	36.32	0.73	37.05
HILLSIDE RESIDENTIAL - NO SWEEPING	35.81	0.72	36.53
LOW INCOME	26.83	0.54	27.37
LOW INCOME - NO ST SWEEPING	26.50	0.53	27.03
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	44.46	0.89	45.35
BULKY MATERIAL (EACH EXTRA ITEM)	17.76	0.36	18.12
SIDE/BACKYARD SERV	13.33	0.27	13.60
GARBAGE TOTES RENTAL	5.65	0.11	5.76
RETURNED TRIP COLLECTION	34.79	0.70	35.49
<u>Commercial Rates</u>			
1 CAN COMM	20.43	0.41	20.84
2 CANS COMM	33.48	0.67	34.15
3 CANS COMM	46.60	0.94	47.54
4 CANS COMM	59.74	1.20	60.94
5 CANS COMM	72.86	1.46	74.32
6 CANS COMM	85.99	1.73	87.72
7 CANS COMM	99.06	1.99	101.05
8 CANS COMM	112.16	2.25	114.41
9 CANS COMM	125.28	2.52	127.80
10 CANS COMM	138.39	2.78	141.17
<u>ORGANICS</u>			
1 CAN COMM	16.34		16.67
2 CANS COMM	26.78		27.32
3 CANS COMM	37.28		38.03
4 CANS COMM	47.79		48.75
5 CANS COMM	58.29		59.46
6 CANS COMM	68.79		70.18
7 CANS COMM	79.25		80.84
8 CANS COMM	89.73		91.53
9 CANS COMM	100.22		102.24
10 CANS COMM	110.71		112.94
2 YD 1 X WEEK	253.57	5.10	258.67
2 YD 2 X WEEK	480.78	9.66	490.44
2 YD 3 X WEEK	707.96	14.23	722.19
2 YD 4 X WEEK	935.16	18.80	953.96
2 YD 5 X WEEK	1,162.32	23.36	1,185.68
2 YD 6 X WEEK	1,387.85	27.90	1,415.75
1/2 3 YD 1 X WEEK	183.65	3.69	187.34
3 YD 1 X WEEK	367.30	7.38	374.68
3 YD 2 X WEEK	699.46	14.06	713.52
3 YD 3 X WEEK	1,031.70	20.74	1,052.44
3 YD 4 X WEEK	1,363.82	27.41	1,391.23
3 YD 5 X WEEK	1,695.99	34.09	1,730.08
3 YD 6 X WEEK	2,028.15	40.77	2,068.92
4 YD 1 X WEEK	475.27	9.55	484.82
4 YD 2 X WEEK	903.22	18.15	921.37
4 YD 3 X WEEK	1,331.19	26.76	1,357.95
4 YD 4 X WEEK	1,759.19	35.36	1,794.55
4 YD 5 X WEEK	2,187.14	43.96	2,231.10
4 YD 6 X WEEK	2,615.12	52.56	2,667.68
6 YD 1 X WEEK	710.11	14.27	724.38
6 YD 2 X WEEK	1,358.98	27.32	1,386.30
6 YD 3 X WEEK	2,007.85	40.36	2,048.21
6 YD 4 X WEEK	2,656.75	53.40	2,710.15
6 YD 5 X WEEK	3,305.65	66.44	3,372.09
6 YD 6 X WEEK	3,954.52	79.49	4,034.01
SPECIAL COLLECTION	29.18	0.59	29.77
<u>ORGANICS</u>			
1 YD 1 X WEEK	139.97		142.79
1 YD 2 X WEEK	265.39		270.72
1 YD 3 X WEEK	390.79		398.65

Attachment: 2020 rate application [Revision 1] (2702 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2020

DESCRIPTION	Current Rates	Add Current 2.01%	New Rates
1 YD 4 X WEEK	516.21		526.59
1 YD 5 X WEEK	641.60		654.50
1 YD 6 X WEEK	766.09		781.49
2 YD 1 X WEEK	202.86		206.94
2 YD 2 X WEEK	384.62		392.35
2 YD 3 X WEEK	566.37		577.75
2 YD 4 X WEEK	748.13		763.17
2 YD 5 X WEEK	929.86		948.54
2 YD 6 X WEEK	1,110.28		1,132.60
1/2 3 YD 1 X WEEK	146.92		149.87
3 YD 1 X WEEK	293.84		299.74
3 YD 2 X WEEK	559.57		570.82
3 YD 3 X WEEK	825.36		841.95
3 YD 4 X WEEK	1,091.06		1,112.98
3 YD 5 X WEEK	1,356.79		1,384.06
3 YD 6 X WEEK	1,622.52		1,655.14
4 YD 1 X WEEK	380.22		387.86
4 YD 2 X WEEK	722.58		737.10
4 YD 3 X WEEK	1,064.95		1,086.36
4 YD 4 X WEEK	1,407.35		1,435.64
4 YD 5 X WEEK	1,749.71		1,784.88
4 YD 6 X WEEK	2,092.10		2,134.14
6 YD 1 X WEEK	568.09		579.50
6 YD 2 X WEEK	1,087.18		1,109.04
6 YD 3 X WEEK	1,606.28		1,638.57
6 YD 4 X WEEK	2,125.40		2,168.12
6 YD 5 X WEEK	2,644.52		2,697.67
6 YD 6 X WEEK	3,163.62		3,227.21
SPECIAL COLLECTION	23.34		23.82
REGULAR COMPACTOR (PER YARD)	46.10	0.93	47.03
RECYCLE COMPACTOR (PER YARD)	27.25	0.55	27.80
SUPER COMPACTOR (PER YARD)	92.17	1.85	94.02
20 YARD DEBRIS BOX	507.33	10.20	517.53
35 YARD DEBRIS BOX	724.77	14.57	739.34
40 YARD DEBRIS BOX	845.61	17.00	862.61
ORGANICS			
20 YARD DEBRIS BOX	405.86		414.02
35 YARD DEBRIS BOX	579.82		591.47
40 YARD DEBRIS BOX	676.49		690.09
PERM RENTAL	268.79	5.40	274.19
PERM DISPOSAL (PER YARD)	25.28	0.51	25.79
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	259.32	5.21	264.53
40 YARD OTHER RECYCLABLES	432.24	8.69	440.93
20 YARD DEBRIS BOX HILLSIDE	632.56	12.71	645.27
40 YARD DEBRIS BOX HILLSIDE	970.37	19.50	989.87
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	399.51	8.03	407.54
2 YARD COMPACTOR 2 X WEEK	799.01	16.06	815.07
2 YARD COMPACTOR 3 X WEEK	1,198.53	24.09	1,222.62
3 YARD COMPACTOR 1 X WEEK	599.27	12.05	611.32
3 YARD COMPACTOR 2 X WEEK	1,198.53	24.09	1,222.62
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	798.84	16.06	814.90
2 YARD COMPACTOR 2 X WEEK	1,597.67	32.11	1,629.78
2 YARD COMPACTOR 3 X WEEK	2,396.51	48.17	2,444.68
3 YARD COMPACTOR 1 X WEEK	1,198.25	24.08	1,222.33
3 YARD COMPACTOR 2 X WEEK	2,396.51	48.17	2,444.68
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: 2020 rate application [Revision 1] (2702 : Recology Rate Adjustment)

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL APPROVING AN ADJUSTMENT IN
SOLID WASTE COLLECTION RATES FOR 2020**

WHEREAS, the City of Morgan Hill (the "City") has approved a franchise agreement with Recology South Valley ("Recology") that establishes a methodology for regulating the maximum rates that Recology can charge to Morgan Hill customers; and

WHEREAS, Recology has submitted an application for a rate adjustment that substantially complies with the methodology in the Agreement; and

WHEREAS, the cost of living, as indicated by the consumer price index, and the cost of motor fuels have increased during the past year causing an increase in the cost of providing service; and

WHEREAS, Recology has agreed to provide notice in their next garbage billing explaining the rate adjustment process; and

WHEREAS, further reasons supporting the rate adjustment described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Solid Waste Management Rate Adjustment for 2020" submitted for City Council consideration at its meeting of April 15, 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, 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 that Recology South Valley is hereby authorized to adjust their rates up to the maximum levels listed on the rate schedule attached hereto as Exhibit A.

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 15th day of April 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 15th day of April 2020.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Recology Rate Resolution 2020 [Revision 3] (2702 : Recology Rate Adjustment)

EXHIBIT A

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2020

DESCRIPTION	Current Rates	Add Current 2.01%	New Rates
<u>Residential Rates</u>			
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8 CANS COMM	89.73		91.53
9 CANS COMM	100.22		102.24
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4 YD 3 X WEEK	1,331.19	26.76	1,357.95
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6 YD 5 X WEEK	3,305.65	66.44	3,372.09
6 YD 6 X WEEK	3,954.52	79.49	4,034.01
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Attachment: Recology Rate Resolution 2020 [Revision 3] (2702 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2020

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2 YD 3 X WEEK	566.37		577.75
2 YD 4 X WEEK	748.13		763.17
2 YD 5 X WEEK	929.86		948.54
2 YD 6 X WEEK	1,110.28		1,132.60
1/2 3 YD 1 X WEEK	146.92		149.87
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3 YD 4 X WEEK	1,091.06		1,112.98
3 YD 5 X WEEK	1,356.79		1,384.06
3 YD 6 X WEEK	1,622.52		1,655.14
4 YD 1 X WEEK	380.22		387.86
4 YD 2 X WEEK	722.58		737.10
4 YD 3 X WEEK	1,064.95		1,086.36
4 YD 4 X WEEK	1,407.35		1,435.64
4 YD 5 X WEEK	1,749.71		1,784.88
4 YD 6 X WEEK	2,092.10		2,134.14
6 YD 1 X WEEK	568.09		579.50
6 YD 2 X WEEK	1,087.18		1,109.04
6 YD 3 X WEEK	1,606.28		1,638.57
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ORGANICS			
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40 YARD DEBRIS BOX	676.49		690.09
PERM RENTAL	268.79	5.40	274.19
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40 YARD OTHER RECYCLABLES	432.24	8.69	440.93
20 YARD DEBRIS BOX HILLSIDE	632.56	12.71	645.27
40 YARD DEBRIS BOX HILLSIDE	970.37	19.50	989.87
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	399.51	8.03	407.54
2 YARD COMPACTOR 2 X WEEK	799.01	16.06	815.07
2 YARD COMPACTOR 3 X WEEK	1,198.53	24.09	1,222.62
3 YARD COMPACTOR 1 X WEEK	599.27	12.05	611.32
3 YARD COMPACTOR 2 X WEEK	1,198.53	24.09	1,222.62
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	798.84	16.06	814.90
2 YARD COMPACTOR 2 X WEEK	1,597.67	32.11	1,629.78
2 YARD COMPACTOR 3 X WEEK	2,396.51	48.17	2,444.68
3 YARD COMPACTOR 1 X WEEK	1,198.25	24.08	1,222.33
3 YARD COMPACTOR 2 X WEEK	2,396.51	48.17	2,444.68
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: Recology Rate Resolution 2020 [Revision 3] (2702 : Recology Rate Adjustment)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

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

APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS AND 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 and Associates, Inc. for the not to exceed amount of \$219,000 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:

This contract was originally introduced at the March 4, 2020 City Council meeting, at which 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.

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.

Following the March 4 meeting, Section 6, "Performance of Work", on page 2 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.

Attachment: David J. Powers Associates- Annexation EIR [Revision 1] (2694 : Annexation EIR Consultant Agreement with DJPA)

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

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date:

Date:

APPROVED AS TO FORM:

DAVID J. POWERS & ASSOCIATES, INC.

City Attorney

By:

Donald A. Larkin

Akoni Oshida, President

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

Date:

February 12, 2020

Martha Silveira

By:

Martha Silveira, C

Print Name and Title of Signer.

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

Date:

2/12/20

EXHIBIT A - SCOPE OF SERVICES



Morgan Hill Annexation Environmental Impact Report

May 4, 2018

Primary Contact

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

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

Project Understanding

The project is the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary (UGB) as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System (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.

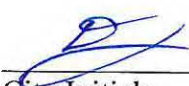
- 3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.
- 3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as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

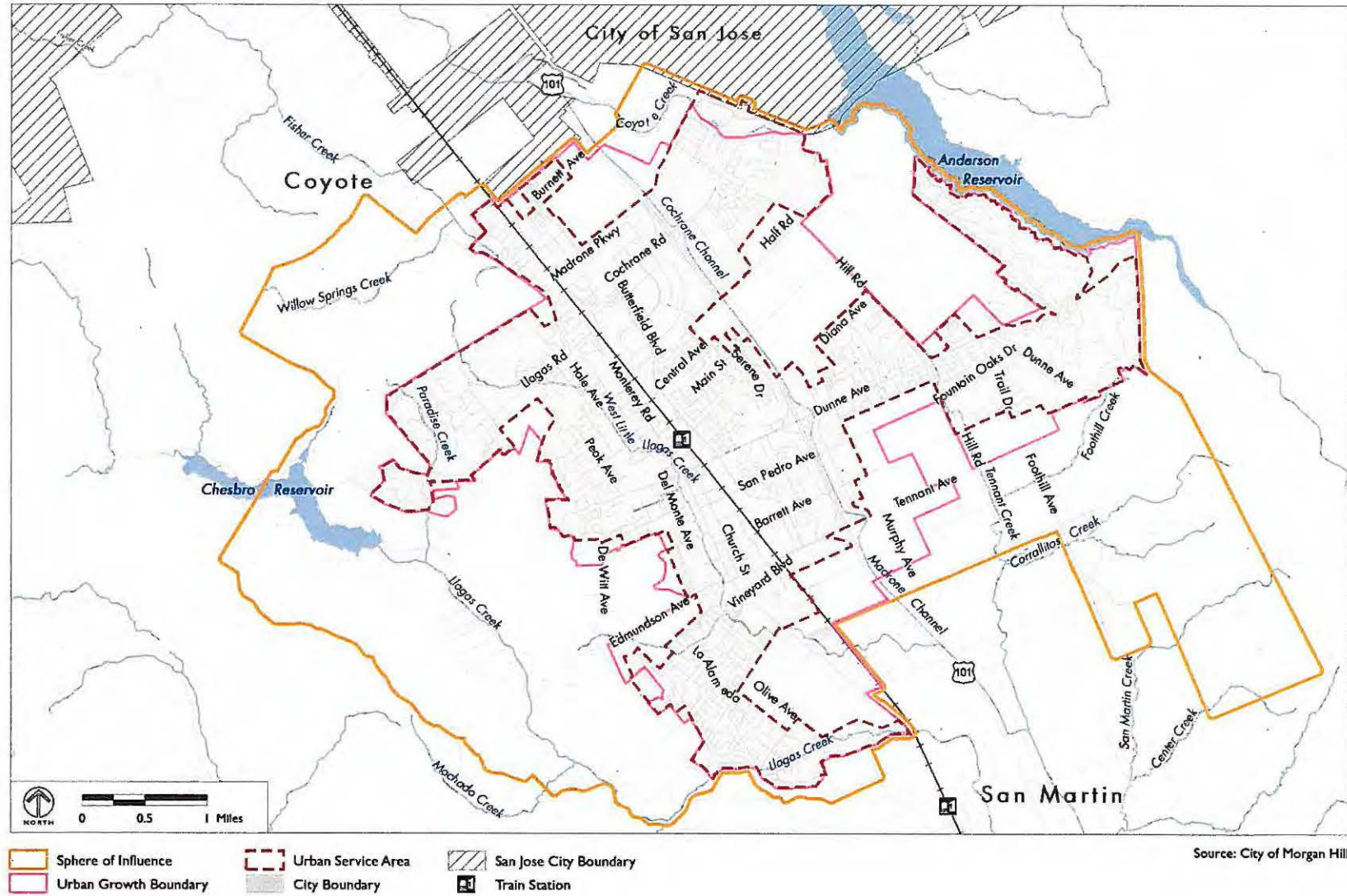
Title: City Attorney

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.

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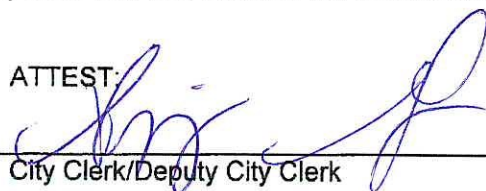
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

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

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

ATTEST:


 City Clerk/Deputy City Clerk

for Michelle Wilson
 Print Name

Date: 5/30/18

APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin
 Print Name

Date: 5-22-18

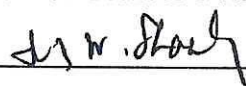
CITY OF MORGAN HILL


 City Manager

Christina J. Turner
 Print Name

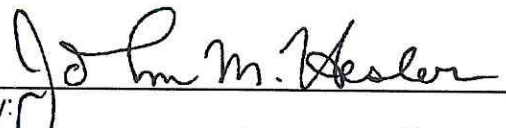
Date: 5/24/18

DAVID J. POWERS & ASSOCIATES, INC.

By: 

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

Date: 5-15-2018

By: 

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

Date: 5-15-2018

EXHIBIT A - SCOPE OF SERVICES



Morgan Hill Annexation Environmental Impact Report

May 4, 2018

Primary Contact

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

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

Project Understanding

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

Scope of Services

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

Task 1: Administrative Draft EIR and Notice of Preparation

Kick-Off Meeting and EIR Initiation

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

Project Description and Notice of Preparation

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

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

Preparation of Administrative Draft EIR

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

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

The main sections of the EIR are described below.

Introduction

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

EIR Summary

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

Project Description

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

Existing Environmental Setting, Impacts, and Mitigation Measures

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

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

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

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

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

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

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

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

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

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

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

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

Task 2: Draft EIR and Notice of Completion

Revision of Administrative Draft EIR/Preparation of Draft EIR

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

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

Notice of Completion

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

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

Preparation of Final EIR

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

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

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

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

Preparation of Mitigation Monitoring and Reporting Program

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

Findings

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

Notice of Determination

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

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

Task 4: Meetings and Hearing Attendance, Project Management

Attendance of Meetings and Hearings

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

Project Management

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

Estimated Schedule

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

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

Project Information Required from City of Morgan Hill

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

Plans (in PDF)

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

Project Details

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

Cost Estimate

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

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

David J. Powers & Associates, Inc.

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

Subconsultants*

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

Total: \$218,930

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

EXHIBIT B - SCHEDULE OF COMPENSATION RATES

CHARGE RATE SCHEDULE¹

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

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

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

SUBJECT TO REVISION JANUARY 2012

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

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 COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

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

APPROVE CONTRACT WITH DAVID J. POWERS AND ASSOCIATES FOR ASSISTANCE IN REVIEWING THE CALIFORNIA HIGH SPEED RAIL AUTHORITY DRAFT ENVIRONMENTAL IMPACT REPORT AND INITIAL STUDY (EIR/EIS)

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers and Associates for the not to exceed amount of \$104,772 to review and provide technical support services for the Draft Environmental Impact Report (EIR) and Initial Study (EIS) for the San Jose to Merced segment of High Speed Rail through Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

2020-2021 Strategic Priorities

Transportation

GUIDING DOCUMENTS

General Plan/Housing Element
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

The California High Speed Rail Authority (CHSRA) is the State Agency responsible for planning, designing, and constructing the California high speed rail system that will connect the San Francisco Bay Area to Los Angeles (eventually from Sacramento to San Diego) with a train system. The segment that contains Morgan Hill is the San Jose to Merced portion of the overall project.

Over the past few years, the CHSRA has been preparing the environmental review for the San Jose to Merced segment in compliance with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) policies and procedures. The Authority has identified three possible alignments through Morgan Hill (Attachment 1):

1. Embankment Adjacent to UPRR Tracks – on a berm with grade separations
2. Viaduct West of Highway 101 – Elevated
3. Blended, At-grade within UPRR Right-of-Way – No Grade Separations

CHSRA has identified the blended, at-grade within UPRR right-of-way as the preferred alignment. However, the Draft Environmental Impact Report and Environmental Initial Study (EIR/EIS) will review all alternatives. The EIR/EIS will be released to the public on April 24, 2020 for a 45-day public comment period.

The City issued a request for proposal (RFP) on March 10, 2020 to GPA Consulting, Illingworth & Rodkin, Inc, Parsons Engineering, and David J. Powers & Associates, Inc. (DJP&A) to solicit technical support and assistance with the review of the Draft EIR/EIS. The City only received one response to the RFP, from DJP&A.

DJP&A has previous experience working with the City of Morgan Hill on various projects and specifically on High Speed Rail (HSR) preliminary technical documents and analysis of the alignments.

DJP&A has been asked to assist the City in reviewing the Draft EIR/EIS and prepare a response that identifies appropriate, feasible, effective and enforceable mitigation measures with a special focus on:

- Noise and Vibration
- Traffic and Circulation
- Emergency Response Impacts
- Urban Design and Planning
- Pedestrian Access and Connectivity
- Aesthetics
- Land Use and Economic Development Impacts

DJP&A proposes to work with Illingworth & Rodkin, Inc. for the Noise and Vibration assessment analysis, Hexagon Transportation for the traffic and circulation/emergency response impacts, BFK Engineers for Civil Engineering, and PW for urban design and planning. DJP&A will be responsible to work with aforementioned subconsultants to review the EIR/EIS and work with staff to develop a response that will be presented to the City Council prior to submission to CHSRA, meeting the 45-day deadline.

Staff recommends the Council approve and authorize the City Manager to execute and administer a consulting agreement with DJP&A to respond to CHSRA's EIR/EIS associated with the San Jose to Merced Project segment for an amount not to exceed \$104,772 (Attachment 2).

COMMUNITY ENGAGEMENT: Inform

CHSRA held community open houses in San Jose, Morgan Hill, and Gilroy to present updates on the project and get input on the San Jose to Merced Project Segment. The City of Morgan Hill has a project web page that provides basic information on the project and links to all HSR staff and website for additional information.

The Draft EIR/EIS and associated documents will be available to the public on April 24, 2020. The public can visit www.hsr.ca.gov for more information. The CHSRA will receive public comment on the EIR from April 24th through June 8th. The Authority plans

to hold a number of public open houses, which will be in person or virtually depending on the Shelter-in-Place order.

Tentatively scheduled as follows:

- San Jose, May 11, 2020 | 4:00-7:00 pm City Hall, Rotunda, 200 E Santa Clara St.
- Gilroy, May 14, 2020 | 4:00-7:00 pm Veterans Memorial Hall, 74 W. 6th St.

Comments can be submitted at the open houses or

Email: san.jose_merced@hsr.ca.gov or

Mail: Northern California Regional Office California High-Speed Rail Authority

100 Paseo De San Antonio, Suite 300

San Jose, CA 95113

HSR EIR/EIS factsheet is included (Attachment 3).

ALTERNATIVE ACTIONS:

The Council may choose not to approve the agreement for technical review and policy support on HSR.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Adoption of the original agreement on June 1, 2016 and subsequent amendments to extend the life of the agreement.

FISCAL AND RESOURCE IMPACT:

In June 2016, the Council approved an agreement with DJP&A and Apex Strategies for \$161,935 to assist in the review of technical preliminary alignments prepared by CHSRA. This particular review was for earlier technical analyses of the alignments and work associated with this review was reimbursable by the Cooperative Agreement with the CHSRA. The CHSRA issued reimbursements for the majority of the work and was unable to reimburse \$31,000 which was eventually absorbed by the Long Range Planning Fund (207). The existing agreement has \$53,527 remaining and staff recommends closing out the existing agreement and utilizing the funds towards this new proposed DJP&A contract for the EIR/EIS review. The proposed work is not eligible for reimbursement by CHSRA.

The remaining balance from the existing 2016 agreement approved in 2016 includes contract appropriation of \$53,527 in the Long Range Planning Fund (207). Those appropriations combined with an amount of \$51,245 from the General Fund (010) will fully cover the cost (\$104,772) of this agreement. No additional appropriations are requested at this time, as staff anticipates savings in operational budgets and projects that are no longer feasible due to COVID-19 and the shelter-in-place.

CEQA (California Environmental Quality Act):

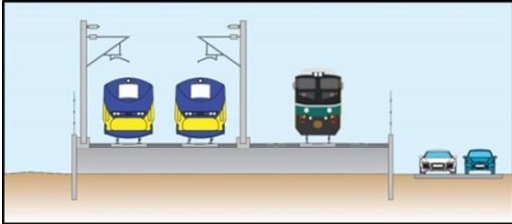
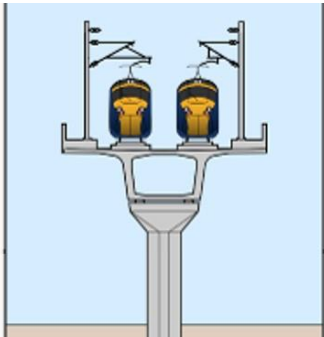
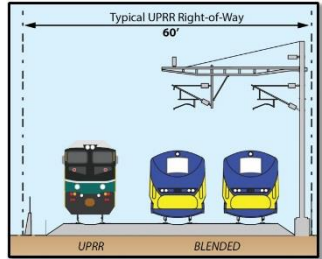
Not a Project.

By the definition provided in the CEQA Guidelines Section 15378, this item does not qualify as a “project” and is therefore exempt.

LINKS/ATTACHMENTS:

1. HSR Alignment Options Through Morgan Hill
2. Agreement
3. HSR EIR/EIS Factsheet

HSR Alignment Options Through Morgan Hill

	Embankment Adjacent to UPRR	Viaduct West of Hwy. 101	Blended, At-grade with UPRR
			
LOCATION	On the east side of UPRR ROW	On west side of Hwy. 101 from Burnett Ave to Tennant Ave	In UPRR ROW
STRUCTURE TYPE	On top of Berm/Retained Fill up to 8 feet high	50' to 80' elevated viaduct	At grade
PROPERTIES AFFECTED	>80	>12	<6
VISUAL IMPACTS	Creates barrier adjacent to existing tracks. Potential soundwalls depending on noise study findings.	Viaduct structure will be highly visible	Overhead Contact System poles every 100-150 feet. Potential soundwalls depending on noise study findings.
TRANSPORTATION IMPACTS	Relocates Monterey Hwy to the east north of Cochrane Rd. Requires grade separations at all grade crossings.	Limited	
TRANSPORTATION BENEFITS	Provides grade separations at all grade crossings.	None	Increased safety (vehicle and pedestrian) at grade crossings by providing Quad Gate configuration. Allows for Caltrain to provide increased service based on their Business Plan (currently under development).

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 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 December 31, 2020 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be review, technical support, and comments on the Draft EIR/EIS for the San Jose to Merced segment of High Speed Rail as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$104,772.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred-Four Thousand, Seven Hundred and Seventy-Two dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation

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

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

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

7.1. **Insurance Types and Amounts.**

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

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

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the

maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

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

7.1.5. Professional Liability.

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

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

- 7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

7.2.1. **General Liability and pollution liability (when pollution liability applies).**

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

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

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

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

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

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

Certificate Holder address:

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

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

9. **Compliance with Law.**

- 9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers,

employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

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

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

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

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

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

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

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

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

Address of CONSULTANT is as follows:

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

Address of CITY is as follows:

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

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

audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

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

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

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

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

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

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

21. **Defense and Indemnification.**

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

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

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance

policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

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

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

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

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

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

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

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

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

[Signatures on Next Page]

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

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

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

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

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date:

Date:

APPROVED AS TO FORM:

Akoni Danielson

City Attorney

By:

Donald A. Larkin

Akoni Danielson Presio

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

Date:

4/8/2020

Martha Silveira

By:

Martha Silveira CFO

Print Name and Title of Signer.

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

Date:

4/8/2020



EXHIBIT A
SCOPE OF SERVICES
CITY OF MORGAN HILL SAN JOSE-MERCED HIGH-SPEED RAIL DRAFT EIR/
EIS SUPPORT
April 7, 2020

Project Understanding

A joint Draft Environmental Impact Report/Draft Environmental Impact Statement (Draft EIR/EIS) is being prepared for the proposed High-Speed Rail link between San Jose and Merced. The San Jose to Merced Project Section would be a critical link in the High-Speed Rail (HSR) system connecting San Francisco and the Bay Area to Los Angeles and Anaheim. The route development for the San Jose to Merced Section is built on the set of HSR network alignment alternatives analyzed in the 2005 Final Program EIR/EIS for the proposed California High-Speed Train System, and the 2008 Bay Area to Central Valley Program HSR EIR/EIS (Authority and Federal Railroad Administration [FRA] 2008). As part of the HSR Alternative selected for further analysis, the Authority and FRA defined a corridor between San Francisco and San Jose along the San Francisco Peninsula and between San Jose and the Central Valley through the Pacheco Pass and via Henry Miller Road. In July 2008, the Authority selected the Pacheco Pass to San Francisco via San Jose as the network alternative for connecting the Bay Area with the Central Valley.

The San Jose (SJ) to Merced section HSR corridor extends approximately (~) 84 miles. Beginning at Scott Road, north of Diridon Station, the corridor primarily follows Monterey Highway, Highway 101, and Highway 152 through Pacheco Pass. The City of Morgan Hill has requested assistance in reviewing the DEIR/EIS, as it pertains to Morgan Hill's Planning Area/Sphere-of-Influence. There are three alignment options within Morgan Hill's limits:

1. West of 101 on Viaduct
2. East of UPRR tracks on Berm
3. At-grade within the UPRR ROW

DJP&A will support the City's efforts to provide constructive comments to the Authority, and to ensure the Draft EIR/EIS is accurately describing environmental baseline conditions, sufficiently describing proposed project characteristics, both during construction and once in operation, applying appropriate impact thresholds, proposing feasible, effective, enforceable mitigation measures, and presenting a reasonable range of Alternatives for consideration, including alternative alignments.

Draft EIR/EIS Technical/Engineering Review Support

DJP&A will review and provide comments on the Draft EIR/EIS and supporting technical environmental documents. The specific tasks included in this scope are listed below.



- Review and provide comments to the Draft EIR/EIS for City's use in preparing a comment letter
- Review and provide comments on the Technical Appendices
- Managing and reviewing sub consultants work

Noise and Vibration

The noise assessment analysis will be reviewed by *Illingworth & Rodkin, Inc.* under contract with DJP&A.

Traffic and Circulation/Emergency Response Impacts

The Transportation studies and reports will be reviewed by *Hexagon Transportation Consultants* under contract with DJP&A.

Urban Design and Planning

Urban design related issues, including pedestrian access and connectivity, visual impacts, and land use and economic development impacts will be reviewed by *Perkins and Will (PW)*, under contract to DJP&A. Prior to release of the DEIR/EIS, PW will develop a thorough understanding of existing conditions and will become familiar with any other planning studies which may have an impact on this scope of work.

Pedestrian Access and Connectivity

PW will evaluate the potential impacts from each alignment on street connectivity, access to adjacent properties, and pedestrian and bicycle experience. The team will propose conceptual level design solutions to mitigate or minimize negative impacts for further engineering study.

PW will review options to create grade-separated pedestrian, bicycle and/or vehicular connections at strategic locations to enhance connectivity through Morgan Hill Downtown. When underground pedestrian passage is applicable, the team will propose concept ideas that will ensure pedestrian safety and comfort.

PW will identify placemaking and street improvement opportunities to leverage transportation investments and advance future multimodal mobility of the City.

Aesthetics

Aesthetics section will be reviewed by DJP&A staff to ensure adequacy of the mitigation measures for visual impacts from viaduct, berm, grade separations, soundwalls, mechanical structures, lighting, electrical systems. PW, under contract to DJP&A, will evaluate visual impacts from the viaduct,



berm, grade separations, and other vertical elements using sections and/or 3D tools and propose conceptual options to minimize or screen these impacts.

Land Use & Economic Development Impact

PW will review plans and studies put forward by the City, combined with an understanding of recent and future development on adjacent sites, to assess the potential impacts on land use and economic development. The team will evaluate potential design variations of the current alignments to minimize impacts on key properties.

PW assumes participation in six virtual meetings as noted below:

1. Meeting with HSR Authority to ‘walk through’ their DEIR/EIS documentation.
2. Meeting with City staff to debrief meeting #1 and to confirm this scope of work in light of lessons learned from meeting #1.
3. Meeting with HSR Authority to table any technical questions and understand their answers which may impact upon this scope of work.
4. Meeting with City staff to debrief meeting #3 and to review potential impact of HSR answers to technical questions on this scope of work.
5. Meeting with City staff to preview initial findings of this study and receive feedback for City staff prior to preparation of draft deliverable.
6. Meeting with City staff to preview final deliverable and receive comments prior to finalizing presentation for City Council.

Civil Engineering Review

Civil engineering services related to the review of HSR alignments proposed in the Draft EIR/EIS for the San Jose-Merced segment will be performed by BKF Engineers (BKF), under contract to DJP&A.

- The scope will include the review of the UPRR rail crossings at E. Dunne Avenue and Tennant Avenue that run through Downtown Morgan Hill.
- BKF will also assist the City in possibly making recommendations to HSR Authority on potential refinements that would improve the alignments from the City’s perspective.
- Additionally, BKF would assist Perkins+Will in reviewing the alignments, especially at the rail crossings, so that whatever refinements are suggested by Perkins+Will for City’s consideration to forward to the HSR Authority would be peer reviewed by BKF relying on a solid engineering foundation.

Submittal of the Comments

Upon completion of the review of the Draft EIR/EIS sections and supporting technical documents, DJP&A will provide a memo to the City with detailed comments on the Draft EIR/EIS by individual sections and for relevant technical documents, in the desired format.



Meetings

This scope assumes DJP&A participation in two (2) staff meetings and one (1) Council hearing. Any additional meetings can be added on a time and materials basis as a budget amendment according to the charge rates in the Master Contract fee schedule.

Budget

The cost to review the Draft EIR/EIS sections is estimated at \$104,772. This total estimate assumes the City will want DJP&A to review other Draft EIR/EIS sections and technical appendices. Additional hours may be needed upon receipt of the actual technical reports. Additional technical subconsultant support can be added, as desired. All costs will be billed on a time and materials basis, commensurate with work completed, in accordance with the Master Contract fee schedule. 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. Payment will be due on a monthly basis. A breakdown of the cost estimate by task and sub-consultants is provided below. Please note this proposal is valid for ninety (90) days.

DJP&A Costs to Review Documents and Provide Comments In-	
House Hours (98 hours) 58 <i>Principal hours @ \$275/hr</i> , 40 <i>Project Manager hours @ \$190/hr</i>	\$23,530
Subconsultants	
<i>Illingworth & Rodkin, Inc. (24 hours @ \$230/hr)</i>	\$6,348*
<i>Hexagon (98 hours @ \$285/hr)</i>	\$32,200*
<i>Perkins and Will</i>	\$31,194*
<i>BKF Engineers</i>	\$11,500*
Total Estimated Budget	\$104,772

Note: * Subconsultants expenses are cost plus 15%.

Schedule

After the Draft EIR/EIS is publicly released, DJP&A team would review and provide comments in the desired format within the first 30 days of the expected 45-day public review period.



EXHIBIT B
SCHEDULE OF COMPENSATION RATES

DJP&A Costs to Review Documents and Provide Comments In-	
House Hours (98 hours) 58 <i>Principal hours @ \$275/hr</i> , 40 <i>Project</i>	\$23,530
<i>Manager hours @ \$190/hr</i>	

Subconsultants

<i>Illingworth & Rodkin, Inc. (24 hours @ \$230/hr)</i>	\$6,348*
<i>Hexagon (98 hours@ \$285/hr)</i>	\$32,200*
<i>Perkins and Will</i>	\$31,194*
<i>BKF Engineers</i>	\$11,500*

Total Estimated Budget	\$104,772
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*Note: * Subconsultants expenses are cost plus 15%.*

EXHIBIT C SCHEDULE OF PREFORMANCE

Schedule:

RFP Responses	March 13, 2020
City Council Contract Approval	April 15, 2020
HSR Draft EIR/EIS Release	April 24, 2020
Meeting to discuss initial findings	May 12, 2020
Draft Response	May 22, 2020
City Council Presentation	May 27, 2020
Final Response	June 5, 2020

PW assumes participation in six virtual meetings as noted below:

1. Meeting with HSR Authority to ‘walk through’ their DEIR/EIS documentation.
2. Meeting with City staff to debrief meeting #1 and to confirm this scope of work in light of lessons learned from meeting #1.
3. Meeting with HSR Authority to table any technical questions and understand their answers which may impact upon this scope of work.
4. Meeting with City staff to debrief meeting #3 and to review potential impact of HSR answers to technical questions on this scope of work.
5. Meeting with City staff to preview initial findings of this study and receive feedback for City staff prior to preparation of draft deliverable.
6. Meeting with City staff to preview final deliverable and receive comments prior to finalizing presentation for City Council.

Submittal of the Comments

Upon completion of the review of the Draft EIR/EIS sections and supporting technical documents, DJP&A will provide a memo to the City with detailed comments on the Draft EIR/EIS by individual sections and for relevant technical documents, in the desired format.

Meetings

This scope assumes DJP&A participation in two (2) staff meetings and one (1) Council hearing. Any additional meetings can be added on a time and materials basis as a budget amendment according to the charge rates in the Master Contract fee schedule.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 15, 2020

PREPARED BY: Harjot Sangha, Assistant to the City Manager
APPROVED BY: City Manager

COVID-19 FOLLOW-UP

RECOMMENDATION(S)

Discuss whether to consider moving forward with any of the following:

1. Local rent eviction ordinance;
2. Local rent control ordinance;
3. General Fund support of businesses; and
4. Creation of an economic development taskforce.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Community Engagement and Messaging
Economic Development
Financial Sustainability

POLICY CONSIDERATIONS:

1. Should Morgan Hill consider adopting a local rent control or eviction ordinance?
2. Should General Fund dollars be used to provide financial support to businesses impacted by the COVID-19 pandemic?
3. Should a separate ad-hoc Economic Development Taskforce be established?

REPORT NARRATIVE:

The purpose of this report is to provide an opportunity for the City Council to discuss the afore-mentioned policy considerations as requested as Future City Council Initiated Agenda Items at the April 1, 2020 City Council meeting.

Local Rent Eviction Ordinance

The State and County have taken actions that effectively prevent eviction for residential tenants who are unable to pay rent due to the COVID-19 emergency. The County's ordinance also protects businesses. The ordinance prohibits property owners from imposing late fees, including penalties and interest, on renters who are protected under the ordinance.

Local Rent Control Ordinance

The City is currently preempted from adopting a broad rent-control ordinance, and limited rent control would likely be ineffective in Morgan Hill because most rental

properties are too new to qualify for rent control under state law. Instead, we have used our emergency authority to issue an emergency order prohibiting rent increases during the COVID-19 emergency.

General Fund Support of Businesses

Due to the impact of the COVID-19 pandemic on the global economy, governments across the world are responding with significant financial stimulus packages to assist individuals and businesses. The United States federal government has passed a \$2 trillion CARES Act, which provides Small Business Administration (SBA) loan programs to business owners, amongst other targeted reliefs for individuals and state and local governments. The City is advocating and lobbying to directly receive some of these funds.

At the April 1st City Council meeting, the City Manager provided a detailed memo outlining the resources and the support the City's Economic Development (ED) Team is providing in collaboration with the Morgan Hill Chamber of Commerce, Visit Morgan Hill, and other local partners. The ED efforts are focused on Information for Businesses and Employers, Business Outreach, Outreach to Developers, Technical & Financial Assistance, Business Resiliency, and Post COVID-19.

Currently, the exact impacts of COVID-19 are difficult to quantify due to the evolving scope and unknown duration of the pandemic. Businesses, large and small, have had to close or significantly reduce service. Many of these businesses provide sales tax or transient occupancy tax that support the City's General Fund which supports City services. Additionally, the City too had to discontinue recreational programs during this time, which will also impact the City's revenues.

Considering the impacts to the City's own financial health, it is not advisable that General Fund dollars be used to provide financial relief to local businesses. Providing financial support from the General Fund as loans or grants, could potentially mean the City Council would need to consider reducing service levels above and beyond what will be required to respond to the reduction in revenues and increases in expenditures due to COVID-19.

Economic Development Taskforce

It was requested that the City Council consider whether an Economic Development Taskforce be established to assist businesses with the impacts of COVID-19.

As discussed above, the City's Economic Development Team, in collaboration with the Morgan Hill Chamber of Commerce, Visit Morgan Hill, and other local partners, is actively engaged with the business community in providing information and outreach, as well as preparing for the eventual economic recovery. To assist the business community in developing recovery plans and exploring best business practices, the City will be hosting a set of industry-specific Business Resiliency Roundtables through webinars. These roundtables will include industry experts as guest speakers and offer a platform for businesses to share ideas and best practices.

In addition, the Morgan Hill Chamber of Commerce has established the *Business Advisory Group* with Chamber Board Directors, bankers, and business representatives who each have a business topic which they are responsible for researching, following, and educating the rest of the group on. All information is funneled to the Chamber to be shared with the business community via eblast and Facebook Post. Everyone in the Business Advisory Group is accessible for emails/telephone calls by businesses that have questions or need help on a specific topic. The topics so far include taxes, employer and employee guidelines and regulations, small business loans and Paycheck Protection Program, Scam Protection and Communication to the Business Community. So far, the CARES Act (PPP), Tax Adjustments, and SCAM Alerts have been the main topics for research and education.

COMMUNITY ENGAGEMENT: Inform and Involve

City staff continue to communicate relevant information to the community on COVID-19 developments via inquiries, hotline, email blasts, and the website.

On April 9, City staff conducted a virtual Town Hall community meeting to provide a brief update on the City's actions and respond to the community's questions.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council previously received COVID-19 updates on March 18, March 23, and April 1.

FISCAL AND RESOURCE IMPACT:

There were no fiscal impacts in preparing this report, however the City will endure significant fiscal impacts due to the COVID-19 pandemic and the shelter-in-place orders which have brought the global and local economy to a screeching halt.

The recommended budget will be released on April 17 and will be introduced to the Council and the community on April 22.

CEQA (California Environmental Quality Act):

Not a Project.

As this is an administrative activity of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. City Manager's Memo from the 4/1/2020 Meeting (weblink)

Item # 11

(Formerly item #10)

AGENDA DATE: 04/15/2020

SUPPLEMENT # 1

From: [D. Muirhead](#)
To: [CC Public Comment](#)
Cc: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: Comment Morgan Hill City Council April 15 Agenda Item #10: Covid-19 follow-up
Date: Sunday, April 12, 2020 8:56:22 PM

Dear Morgan Hill City Council,

Comments for Council Meeting Wednesday, April 15

Agenda Item #10: Covid-19 follow-up

As demonstrated by the agenda item for the April 1 Council meeting, the City and business community leadership and the City Economic Development team have invested considerable City resources in support of our impacted businesses.

But before you allocate even more City resources to this population, I would like you to tell us about what has been done and what recovery plans are being developed for two other populations: our City employees and our City residents.

--- City Employees ---

While core services, including public safety and utility services, are still provided, non essential services have been suspended. What I want to know is the number who have to come in, the number who work from home, and the number on furlough as non-essential. For the non-essential, is the City providing any financial support or other targeted benefits now? Are they using personal leave? Does the City plan to make them whole in full or in part after the emergency ends?

--- City Residents ---

Before you discuss spending General Funds on more business support, please tell us what residents are asking for and what satisfying those needs would cost. On April 9, City staff conducted a virtual Town Hall community meeting (which unfortunately was not mirrored on Channel 17). It would have been more helpful if this agenda item had included the community's questions and any City responses. The Business Impact Survey in the April 1 item included this question

"Anything we could be doing to support you, your business and employees?" and was followed by 31 responses.

What are resident responses to the equivalent question for them?

The City (with some partners) has done several things to ease the disruption to the lives of our residents:

- 1) The City communications team is providing lists of private and other agency resources (useful and appreciated).
- 2) Debbie and Denise are supporting senior nutrition (what are the counts for in-person versus the replacement pick-up?).
- 3) Keri and the maintenance team thoughtfully provided hand-washing stations at the downtown parks. And thank you for not following the draconian lead of County Parks so that we have places to sit and rest and to get a drink of water.
- 4) The School District is providing essential worker childcare.
- 5) The School District is providing breakfast and lunch distribution.

The City has added to the disruption:

- 1) With the loss of the Senior Center and Library, residents lost computer access as well as wifi for internet access.
- 2) The City policy to minimize the number of people who are on-site translated into being unwilling to have a second person mirroring the Town Hall on Channel 17 (this from the PIO; I appreciate the explanation but not the policy interpretation).

Feel free to add to and subtract from these two lists based on your personal observations. I only see the tip of the iceberg during my daily walks and bike rides.

Thank you for your consideration,
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, April 15, 2020 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC MEETINGS DURING THE COVID-19 VIRUS EMERGENCY

Public Participation:

In accordance with Executive Orders N-25-20, N-29-20, and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. The Order will be addressed in the following ways:

Members of the public may not physically attend meetings at the Morgan Hill City Council Chamber.

The City Council meeting will be live-streamed on Channel 17 and on the City's website. Members of the public may participate in the meeting remotely through an electronic meeting in the following ways; by either joining the electronic meeting at <https://bit.ly/0415CityCouncilMeeting> and enter ID: 512 830 012 or by calling in (669) 900-9128 enter Meeting ID: 512 830 012#.

Public comment for City Council meetings will be accepted via email to ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

CONTINUED PUBLIC HEARING

The item **Environmental Assessment application EA2019-0017 and Improvement Agreement: Cochrane-Monument Land Company (TechCon Project)** that was publicly noticed for consideration by the City Council at this meeting has been continued to a date certain of April 22, 2020.

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

Minutes Clerk Angie Gonzalez

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Minutes Clerk Angie Gonzalez

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

RECOGNITIONS

Recognizing and honoring Dolores Huerta

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. FEBRUARY 2020 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

2. ADOPT RESOLUTION APPROVING FY2020-21 LIST OF STREET REHABILITATION PROJECTS FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT

Recommendation:

Adopt resolution approving a list of street rehabilitation projects to be funded by SB 1, The Road Repair and Accountability Act of 2017.

3. APPROVE AGREEMENTS FOR ON-CALL GENERAL CONTRACTORS

Recommendation:

1. Award two-year On-Call General Contractor Services contracts to the following general contractors in the amount of \$200,000: DRP Builders, Inc., Weston Construction, Inc., Valenti Builders, Inc., Castlewood Construction Company, Inc. and Tucker Construction, Inc.; and
2. Authorize the City Manager to execute and administer the On-Call General Contractor Services contracts with DRP Builders, Inc., Weston Construction, Inc., Valenti Builders, Inc., Castlewood Construction Company, Inc. and Tucker Construction Inc.

4. APPROVE FIRST AMENDMENT TO GENERATOR MAINTENANCE SERVICES AGREEMENT

Recommendation:

Approve and authorize the City Manager to execute and administer an amendment to increase the not to exceed amount by \$25,000 for the current service maintenance agreement with Got Power, Inc. dba CD & Power for a total contract amount of \$144,475 for generator maintenance and repair services.

5. APPROVE THE APRIL 1, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARINGS

6. ADOPT HOUSING CRISIS ACT OF 2019: SB 330 IMPLEMENTATION ORDINANCE

Recommendation:

1. Open/close the public hearing;
2. Waive the first and second reading of the ordinance Implementing SB 330, Suspending Certain Growth Management Provisions of Residential Development Control System (RDSCS) until January 1, 2025; and
3. Introduce ordinance.

Estimated Time: 15 Minutes

7. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2020

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2020.

Estimated Time: 10 Minutes

OTHER BUSINESS

8. APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS AND 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 and Associates, Inc. for the not to exceed amount of \$219,000 for preparation of the Annexation Environmental Impact Report.

Estimated Time: 15 Minutes

9. APPROVE CONTRACT WITH DAVID J. POWERS AND ASSOCIATES FOR ASSISTANCE IN REVIEWING THE CALIFORNIA HIGH SPEED RAIL AUTHORITY DRAFT ENVIRONMENTAL IMPACT REPORT AND INITIAL STUDY (EIR/EIS)

Recommendation:

Approve and authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers and Associates for the not to exceed amount of \$104,772 to review and provide technical support services for the Draft Environmental Impact Report (EIR) and Initial Study (EIS) for the San Jose to Merced segment of High Speed Rail through Morgan Hill.

Estimated Time: 15 Minutes

10. COVID-19 FOLLOW-UP

Recommendation:

Discuss whether to consider moving forward with any of the following:

1. Local rent eviction ordinance;
2. Local rent control ordinance;
3. General Fund support of businesses; and
4. Creation of an economic development taskforce.

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.

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

