



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, May 20, 2020 7:00 p.m.

Virtual Meeting

Link to join the meeting can be found below, Morgan Hill, CA 95037

AMENDED AGENDA

Please note that this agenda has been amended to add a proclamation.

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order 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. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/052020CityCouncilMtg> or by calling in to: (669) 900-9128, then enter the meeting id: 945 3961 4854.

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.

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

PROCLAMATIONS

PROCLAIMING THE WEEK OF MAY 17-23, 2020 AS PUBLIC WORKS WEEK

PROCLAIMING THE MONTH OF MAY 2020 AS EHLERS-DANLOS SYNDROME AND
HYPERMOBILITY SPECTRUM DISORDER
AWARENESS MONTH

PROCLAIMING THE MONTH OF MAY 2020 AS OLDER AMERICANS MONTH: MAKE YOUR
MARK

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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)

PUBLIC COMMENT SUPPLEMENTS

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

Recommendation:

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

2. APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

3. APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

Recommendation:

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

4. APPROVE THE MAY 6, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

5. CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

Recommendation:

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

Estimated Time: 90 Minutes

6. REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

Recommendation:

Review and provide direction on the Economic Development Business Recovery Work Program.

Estimated Time: 75 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 17000 Monterey Road

Agency Negotiators: Christina Turner, Chris Ghione

Negotiating Parties: Gavilan Community College District, City of Morgan Hill

Under Negotiation: Price and Terms of Payment for Lease

CLOSED SESSION ANNOUNCEMENT

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 OF MORGAN HILL

PROCLAMATION
of the City of Morgan Hill
Proclaiming
Week of May 17th to 23rd, 2020
as
Public Works Week

WHEREAS, The Public Works Department keeps our community fully functioning through a broad range of services such as infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of Morgan Hill; and

WHEREAS, These infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers and employees from state and local governments and the private sector, who are responsible for rebuilding, improving and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our residents; and

WHEREAS, It is in the public interest for the residents, civic leaders and children in the City of Morgan Hill to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and

WHEREAS, the American Public Works Association has celebrated the annual National Public Works Week since 1960.

NOW, THEREFORE BE IT RESOLVED, I, Rich Constantine, Mayor of the City of Morgan Hill on behalf of the City Council and all residents, do hereby proclaim the week May 17-23, 2020 as National Public Works Week. National Public Works Week allows an opportunity to recognize and thank all our Public Works teammates for the work they do to improve our City's infrastructure. These essential services are especially important during challenging times like Covid-19.

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 20th day of May 2020.

Rich Constantine, Mayor



CITY OF MORGAN HILL

PROCLAMATION

of the City of Morgan Hill

Proclaiming

May 2020

as

Ehlers-Danlos Syndrome and Hypermobility Spectrum Disorder Awareness Month

- WHEREAS,** Ehlers-Danlos syndromes (EDS) are a group of disorders that affect the body's connective tissues including the skin, joints, blood vessels, gut, and many other organs and tissues; and
- WHEREAS,** EDS affects more than one in 5,000 people, and both males and females of every age and race. It is a chronic, life-long condition; and
- WHEREAS,** Hypermobility Spectrum Disorder (HSD) is diagnosed when the musculoskeletal complications of joint hypermobility and joint instability (ease of injury, joint pain, and dislocations for example) arise in a person who does not have the defining features of an underlying syndrome such as EDS or other heritable disorders of connective tissue; and
- WHEREAS,** in addition, several related disorders are observed in a number of people with EDS and with HSD. These add complexity to the presentation of their condition and its management; and
- WHEREAS,** a network of EDS and HSD support groups can help connect those managing life with these conditions as well as better informing the health care community and the public; and
- WHEREAS,** early and accurate diagnosis can provide the opportunity to create life-saving medical plans and improve quality of life; and
- WHEREAS,** there is currently no treatment for the Ehlers-Danlos Syndromes and no known cure; and
- WHEREAS,** further medical research and awareness can bring hope for treatment and a cure.

NOW, THEREFORE, BE IT RESOLVED, I, Rich Constantine, Mayor of the City of Morgan Hill, on behalf of the City Council and all residents, do hereby proclaim May 2020 as Ehlers-Danlos Syndromes and Hypermobility Spectrum Disorder Awareness Month

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 20th day of May 2020.

Rich Constantine, Mayor



CITY OF MORGAN HILL

PROCLAMATION

of the City of Morgan Hill

Proclaiming

May 2020

as

Older America's Month: Make Your Mark

WHEREAS, around the nation, older adults make their marks every day as volunteers, employees, employers, parents, grandparents, mentors, and advocates. They offer their time, talents, and experience to the benefit of our communities; and

WHEREAS, for 57 years, Older Americans Month (OAM) has been a special time to recognize these contributions. This year's OAM theme, *Make Your Mark*, highlights older adults' unique and lasting contributions to their communities—everything from sharing a story with grandchildren to leaving a legacy of community action; and

WHEREAS, communities that support and include all their members are stronger! Please join the City of Morgan Hill in strengthening our community.

NOW, THEREFORE, BE IT RESOLVED, I, Rich Constantine, Mayor of the City of Morgan Hill, on behalf of the City Council and all residents, do hereby proclaim May 2020 to be **Older Americans Month: Make Your Mark**. We urge every resident to take time during this month to recognize older adults and the people who serve them as valuable members of our community.

If you are interested in getting involved once the shelter in place is lifted please contact Denise Melroy at denise.melroy@mhcrc.com.

Centennial Recreation Senior Center <https://www.facebook.com/morganhillseniors>.

Need OAM resources or want to learn more? Visit the official website, acl.gov/oam, and follow ACL on [Twitter](#) and [Facebook](#).

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 20th day of May 2020.

Rich Constantine, Mayor

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: supplement for 5-20-20 meeting
Date: Thursday, May 7, 2020 9:29:01 AM
Attachments: [2020-04-29.docx](#)

Michelle Bigelow, MMC, CPMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: John Lang <John.Lang@morganhill.ca.gov>
Sent: Thursday, May 7, 2020 9:23 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

For next public comment

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Thursday, May 07, 2020 9:19 AM
To: Barry Holtzclaw <bholtzclaw@newsvmmedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; Nathan Mixer <nmixter@newsvmmedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Tammy Brownlow <president@gilroyedc.org>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinforsupervisor@gmail.com>; supervisors@cosb.us; Sally <rebtruck@razzolink.com>; 'Pat Loe' <donpatloe@att.net>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; shawna freels <shawna.freels@ci.gilroy.ca.us>; Robert T. Dillon <rtdillon@garlic.com>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Editor, Gilroy Dispatch, Hollister Freelance and Morgan Hill Times,
Please publish Jon Coupal's Article as a Guest Editorial so that your readers will know how taxpayers feel about being shafted by boondoggle transit fiascoes, and higher gas & diesel taxes to subsidize bankrupt-from-conception public sector transit. We could save billions, and lower local government budget deficits if we privatized transit. Have all transit riders take Uber, Lyft, shuttles, taxis, and pay their fares, and we'd save big bucks. We cannot afford wasteful public sector transit, when we could have much more transportation for much less money,

Communication: Public Comment Supplements (PUBLIC COMMENT)

less fraud, less waste, and less abusive governance by unelected "directors" at joint power authorities that nobody ever voted for. If local elected Supervisors and Councilmembers cared for taxpayers, then they'd end the fraud, waste and abuse at the transit agencies, and that goes double for CAHSRA's Bullet-in-the-Brain Train.

Joseph P. Thompson, Esq.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

cc: PUBLIC COMMENT: NEXT MEETING: VIRTUAL, REAL, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"

----- Forwarded Message -----

From: Jon Coupal <jon@hjta.org>

To: 'Joseph Patrick Thompson' <translaw@pacbell.net>

Sent: Monday, May 4, 2020, 09:54:47 AM PDT

Subject: RE: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]

Sent: Monday, May 04, 2020 9:08 AM

To: Jon Coupal <jon@hjta.org>

Subject: Re: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon,

Please send me a copy of your Article and I'll send it to my State Senator.

Joe Thompson

(408) 607-7351 cell phone

Napa

Communication: Public Comment Supplements (PUBLIC COMMENT)

On Saturday, May 2, 2020, 06:23:21 AM PDT, Jon Coupal <jon@hjta.org> wrote:

Wait until you see my column on Monday.

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]
Sent: Friday, May 01, 2020 2:29 PM
To: Jon Coupal <jon@hjta.org>; Senator Dodd <senator.dodd@senate.ca.gov>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Jon, and Senator Dodd,

We didn't vote for HSR like CAHSRA is cramming down our throats. We don't want it. Motorists cannot afford to pay more gas taxes for the subsidies it requires. We could have HSR without taxpayers paying a dime, if we put enough UPS, Fedex and Postal Service tonnage aboard HSR. But HSRC and then HSRA never listened to this private sector transport idea. They mistakenly believe that California's taxpayers have endless money.

Joe Thompson

(408) 607---7351 cell phone

----- Forwarded Message -----

From: HSR san.jose_merced@HSR <san.jose_merced@hsr.ca.gov>

Communication: Public Comment Supplements (PUBLIC COMMENT)

To: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Friday, May 1, 2020, 10:59:27 AM PDT

Subject: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

[Automatic Reply]

Thank you for taking the time to contact the California High-Speed Rail Authority. Your views and comments are important to our team. We receive a large amount of letters, phone calls and emails, and because this email is not monitored 24 hours a day and generally not on the weekends, we may not be able to respond to you right away. However, our team works very hard to ensure that all comments/questions are read and responded to, when appropriate.

If you have any questions about working at the Authority, please visit our High-Speed Rail Careers page here: <http://hsr.ca.gov/About/Careers/index.html>.

Thank you again for your interest in the California High-Speed Rail Program.

[California High-Speed Rail Authority](#)



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Communication: Public Comment Supplements (PUBLIC COMMENT)

NUCLEAR POWERED AIRCRAFT AND HIGH SPEED RAIL

Jon Coupal

A long forgotten aspect of the nuclear arms race was the costly undertaking by the United States to develop a nuclear powered aircraft as a strategic bomber.

Even before Allied powers defeated Nazi Germany in 1945, both the United States and the Soviet Union were battling for post-war superiority. With the successful detonation of two atomic bombs – bringing the Pacific Theater hostilities to an abrupt halt – the U.S. had a brief period of nuclear superiority over the USSR.

That would not last long as the USSR quickly accelerated its nuclear program and the Cold War was on.

In May 1946, the United States Army Air Forces started the Nuclear Energy for the Propulsion of Aircraft (NEPA) project. The alluring idea was to build an aircraft that could, in theory, stay aloft indefinitely. In 1951, the NEPA project was succeeded by the Aircraft Nuclear Propulsion (ANP) program.

However, despite the efforts of America's best nuclear and aviation scientists working with a virtually unlimited budget, the problems were insurmountable. The biggest hurdle was that nuclear reactors are very heavy. Sustaining one aloft with a fixed-wing aircraft turned out to be a challenge that could only be overcome by using a modified B-26 as a platform.

Reducing the weight of the reactors by shielding them with lighter material put the flight crews in danger from the high risk of radiation exposure. This latter problem never worried the Soviets in that their similar programs were willing to so expose the crews. But this led to an unacceptable mortality rate, even for the Russians.

After more than a decade of throwing good dollars after bad, the aircraft nuclear propulsion programs were substantially terminated by President John F. Kennedy in 1961.

The lessons of history should be instructive for Californians, who have watched for more than a decade as the state has thrown their money into the increasingly impossible high-speed rail program.

Even before the California High-Speed Rail bond proposal appeared on the ballot in November 2008, the Howard Jarvis Taxpayers Association commissioned a study in conjunction with the Reason Foundation because of deep concerns about the project's viability. The study, published in September 2008, warned:

"The CHSRA plans as currently proposed are likely to have very little relationship to what would eventually be built due to questionable ridership projections and cost assumptions, overly optimistic projections of ridership diversion from other modes of transport, insufficient attention to potential speed restrictions and safety issues and discounting of potential community or political opposition. Further, the system's environmental benefits have been grossly exaggerated, especially with respect to reduction of greenhouse gas emissions that have been associated with climate change."

Every negative prediction about the project came to be realized. Even initial advocates of the project, including a former chairman of the High Speed Rail Authority, have turned against the costly boondoggle.

At the end of 2018, California's own State Auditor issued a scathing report excoriating the project's mismanagement, waste and lack of transparency. Speed-readers needed to go no further than the subtitle to learn the conclusion: "Flawed Decision Making and Poor Contract Management Have Contributed to Billions in Cost Overruns and Delays in the System's Construction."

Nothing has improved since then, and much looks even worse.

In December of 2019, the Federal Railroad Administration objected to the California High-Speed Rail Authority's plan to issue a request for proposals to build train track and install electrical wiring and maintenance facilities. The FRA warned, "it is premature for CHSRA to undertake another major design-build contract." Disregarding the concerns, the rail authority went ahead the next day with its plan to issue the RFP.

In February, the Authority issued its latest two-year "business plan," which once again increased the projected cost and reported a further delay in completion. Color us shocked.

Soon after, a draft environmental document outlined the preferred route from Bakersfield to Palmdale, an engineering feat that would cost \$18.1 billion and

mow down a high school, a homeless shelter, a church, eight motels, 253 housing units, 311 businesses and 175 agricultural fields.

In March, the L.A. Times revealed that employees of the rail authority's top consultant had been ordered to hide bad news about the project.

There's no hiding it. The Legislative Analyst's Office concluded that the latest HSR business plan is not realistic, has significant funding challenges, is susceptible to further cost overruns and is inconsistent with voter intent because it relies on public subsidies.

In the 1960s, the President and Congress wisely pulled the plug on a failed project when it became obvious that all the money in the Pentagon couldn't make it fly. Until California's government wises up, we'll be stuck watching our taxpayer dollars fly out the window.

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: 5/20/20 public comment supplement
Date: Friday, May 15, 2020 3:56:32 PM
Attachments: [AGs Complaint against Uber & Lyft.pdf](#)

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Thursday, May 14, 2020 1:53 PM

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; Nathan Mixter <nmixter@newsymedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; shawna freels <shawna.freels@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rt Dillon@garlic.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor supervisor@gmail.com>; supervisors@cosb.us; 'Pat Loe' <donpatloe@att.net>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; cityclerk@hollister.ca.gov

Subject: LAWSUIT BY CALIFORNIA ATTORNEY GENERAL, SF, LA & SAN DIEGO, AGAINST UBER AND LYFT: ASSAULT ON SMALL BUSINESS IN CALIFORNIA

Dear Barry and Nathan,

At a time when California small business is under assault by the worldwide pandemic, that has cast our economy into the depths of a Great Depression, our State Attorney General and three big cities' attorneys sue small business owners in the transportation field. Already crucified, strangled and suffocated by governance abuses in California, and confiscatory taxes/fees, forced to subsidize government owned transport hemorrhaging red ink, transit agencies bankrupt-from-conception, capped-off by the Supermassive Black Hole Bullet Train, our government in California would snuff Californians trying to make a living. I thought we were to encourage small business? What hypocrites we are.

A few miles from my high school there were two garages where two sets of two young men started their small businesses:

Hewlett and Packard; and Jobs and Wozniak.

What would have happened if our government had snuffed-out those two small businesses started in garages in Cupertino and Los Altos?

AB-5 is contrary to the federal law signed by President Clinton, and carried in the House by Norm Mineta, later Secretary of Transportation.

So, do we want our law to encourage small business in transportation, as President Clinton and Norm Mineta wrote, or do we want to crush transport small business like AB-5 does in California?

History shows that the sounder public policy is to encourage, not kill-off, small business.

Caveat viator.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Communication: Public Comment Supplements (PUBLIC COMMENT)

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

**CC: PUBLIC COMMENT: NEXT MEETING, VIRTUAL OR REAL; REGULAR, SPECIAL, STUDY
SESSION, PUBLIC
WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-
CALLED
MOBILITY PARTNERSHIP**

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Communication: Public Comment Supplements (PUBLIC COMMENT)

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
SATOSHI YANAI, SBN 186355
Supervising Deputy Attorney General
MINSU D. LONGIARU, SBN 298599
MARISA HERNÁNDEZ-STERN, SBN 282477
MANA BARARI, SBN 275328
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E-mail: Minsu.Longiaru@doj.ca.gov
Attorneys for the People of the State of California

**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

[Plaintiff's Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 *Additional Counsel for the People (Continued from Preceding Page):*

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26 *Attorneys for the People of the State of California*

1 Plaintiff, the People of the State of California (“People”), by and through Xavier Becerra,
2 Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara
3 W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring
4 this action against Uber Technologies, Inc. (“Uber”), Lyft, Inc. (“Lyft”), and Does one through
5 fifty (collectively “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010
8 and 2012, respectively, they made the calculated business decision to misclassify their on-demand
9 drivers as independent contractors rather than employees. Both companies continue to
10 misclassify their drivers—and have exploited hundreds of thousands of California workers—in
11 direct contravention of California law.

12 2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and
13 requirements that implement California’s strong public policy in favor of protecting workers and
14 promoting fundamental fairness for all Californians. This longstanding policy framework
15 includes a comprehensive set of safeguards and benefits established by the State of California
16 (“State”), cities, and counties, such as minimum wages, overtime premium pay, reimbursement
17 for business expenses, workers’ compensation coverage for on-the-job injuries, paid sick leave,
18 and wage replacement programs like disability insurance and paid family leave. Uber and Lyft
19 owe their drivers these benefits and protections.

20 3. Recognizing the serious problem of employee misclassification and the harms it
21 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
22 Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5
23 (2019-2020 Reg. Sess.) (“A.B. 5”).) A.B. 5 codified and extended the California Supreme
24 Court’s landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018)
25 4 Cal.5th 903, reh. denied (June 20, 2018) (“*Dynamex*”). California law is clear: for the full
26 range of protections afforded by California’s Wage Orders, Labor Code, and Unemployment
27 Insurance Code, workers are generally presumed to be employees unless the hiring entity can
28

1 overcome this presumption by establishing each of the three factors embodied in the strict “ABC”
2 test.

3 4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber
4 and Lyft are traditional employers of these misclassified employees. They hire and fire them.
5 They control which drivers have access to which possible assignments. They set driver quality
6 standards, monitor drivers for compliance with those standards, and discipline drivers for not
7 meeting them. They set the fares passengers can be charged and determine how much drivers are
8 paid.

9 5. Uber and Lyft are transportation companies in the business of selling rides to
10 customers, and their drivers are the employees who provide the rides they sell. The fact that Uber
11 and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their
12 fundamental rights as employees.

13 6. But rather than own up to their legal responsibilities, Uber and Lyft have worked
14 relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature
15 declined. They utilize driver contracts with mandatory arbitration and class action waiver
16 provisions to stymie private enforcement of drivers’ rights. And now, even amid a once-in-a-
17 century pandemic, they have gone to extraordinary lengths to convince the public that their
18 unlawful misclassification scheme is in the public interest. Both companies have launched an
19 aggressive public relations campaign in the hopes of enshrining their ability to mistreat their
20 workers, all while peddling the lie that driver flexibility and worker protections are somehow
21 legally incompatible.

22 7. Uber’s and Lyft’s motivation for breaking the law is simple: by misclassifying their
23 drivers, Uber and Lyft do not “bear any of [the] costs or responsibilities” of complying with the
24 law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches:
25 “Our business would be adversely affected if Drivers were classified as employees instead of
26 independent contractors.” (Uber Securities and Exchange Com. (“SEC”) S-1, p. 28 [Filing Date:
27 April 11, 2019].)
28

8. As one federal district judge recently observed: “[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature” (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) ___ F.Supp.3d ___ [2020 WL 16484151, at *2].)

9. The State’s laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding” businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to “assume responsibility” for “the ill effects to workers and their families” of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the “erosion of the middle class and the rise in income inequality.” (A.B. 5, § 1(c).)

10. The time has come for Uber’s and Lyft’s massive, unlawful employee misclassification schemes to end. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because:

(i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Xavier Becerra, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and Dennis J. Herrera, the San Francisco City Attorney (collectively referred to as “Plaintiff” or the “People”).

15. Xavier Becerra is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under A.B. 5. (Lab. Code, § 2750.3(j).)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

1 18. The San Francisco City Attorney, Dennis J. Herrera, has the statutory authority to
2 bring actions in the name of the People of the State of California to enforce California’s UCL. As
3 the City Attorney of a city and county, he also has the express statutory authority under A.B. 5 to
4 bring an action for injunctive relief to prevent the continued misclassification of employees.
5 (Lab. Code, § 2750.3(j).)

6 **II. DEFENDANTS**

7 19. Defendant Uber Technologies, Inc. is a California corporation with its principal place
8 of business in San Francisco, California.

9 20. Defendant Lyft, Inc. is a California corporation with its principal place of business in
10 San Francisco, California.

11 21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are
12 unknown to the People. The People are informed and believe, and on this basis, allege that each
13 of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well
14 as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter
15 collectively referred to as “DOES 1 through 50”), are legally responsible for the conduct alleged
16 herein. The names and identities of defendants DOES 1 through 50 are unknown to the People,
17 and when they are known the People will amend this Complaint to state their names and
18 identities.

19 **FACTUAL ALLEGATIONS**

20 **I. UNDER DYNAMEX AND A.B. 5, CALIFORNIA USES THE ABC TEST TO** 21 **DETERMINE EMPLOYEE STATUS.**

22 22. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903,
23 along with the passage of A.B. 5, which went into effect January 1 of this year, have established
24 that the ABC test governs the determination of whether a worker is properly classified as an
25 employee or independent contractor for purposes of the Labor Code, the Unemployment
26 Insurance Code, and the Wage Orders of the Industrial Welfare Commission (“I.W.C.”).

27 23. Under the ABC test, for a worker to be properly classified as an independent
28 contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

1 establishing that *all* of the following three conditions are satisfied: (A) the worker is free from
2 the control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact; (B) the worker performs work that
4 is outside the usual course of the hiring entity’s business; and (C) the worker is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as the
6 work performed. (Lab. Code, § 2750.3(a)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.)
7 These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

8 24. Because the hiring entity must establish all three parts of the ABC test in order to
9 lawfully classify a worker as an independent contractor, the hiring entity’s failure to satisfy any
10 one part of the ABC test results in the worker in question being classified as an employee rather
11 than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

12 **II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT**
13 **SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH**
14 **DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.**

15 25. For the purpose of this Complaint, “Drivers” refers to individuals who fall into one or
16 both of the following two categories. *First Category:* All individuals who have driven for Uber
17 as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed
18 up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual
19 name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary
20 directly under their individual name or with a fictional/corporate name for their services as ride-
21 hailing drivers. *Second Category:* All individuals who have driven for Lyft as ride-hailing
22 drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive
23 directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with
24 a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their
25 individual name or with a fictional/corporate name for their services as ride-hailing drivers.
26 “Passengers” refer to individuals who receive Uber and/or Lyft ride-hailing services through such
27 Drivers.

28 26. Each Defendant operates a ride-hailing transportation service in which Passengers
may request and pay for on-demand rides from either Defendant by using that Defendant’s

smartphone application (the “Uber App,” the “Lyft App,” “App” or “Defendant’s App” respectively, and collectively, “Apps” or “Defendants’ Apps”).

27. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the State of California to provide on-demand rides throughout the State to Passengers who book such rides through either Defendant’s App.

28. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed its name to Lyft, and subsequently sold the “Zimride” component of its business (a long-distance carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a market capitalization of approximately \$13 billion.

29. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had a market capitalization of approximately \$53 billion.

30. Among the various ride-hailing options offered by Defendants, by far the largest is an option in which individuals with non-commercial drivers’ licenses provide on-demand rides to Passengers via each Defendant’s App using ordinary passenger vehicles. Lyft refers to this on-demand option as a “Lyft.” Uber refers to this option as “UberX.”

III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS DRIVERS.

31. Since first launching their ride-hailing services, each Defendant has misclassified, and continues to misclassify, its Drivers as independent contractors instead of employees.

32. Each Defendant requires its Drivers, as a pre-condition of providing rides through Defendant’s App, to agree to standard-form contracts and addenda. Each Defendant’s contracts and addenda contain standardized terms and conditions that each Defendant sets regarding its Drivers’ work. Each Defendant’s contracts and addenda also contain boilerplate language unilaterally designating each Defendant’s Drivers as independent contractors.

A. Part A of the ABC Test (“control and direction”)

33. Each Defendant retains all necessary control over its Drivers’ work, which is to transport Passengers from point A to point B in a car.

34. Each Defendant's App, in combination with each Defendant's policies, functions like an algorithmic manager that effectively supervises its Drivers like a human manager.

35. Each Defendant determines what Drivers are eligible to provide ride-hailing services on its App and can change its Driver standards in its discretion.

36. Each Defendant dictates the types of cars its Drivers may use on its app, as well as the standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its discretion.

37. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant retains the right to terminate or pause a Driver's tenure at any time in accordance with terms, conditions, and policies that each Defendant sets in its discretion.

38. Each Defendant sets the fares that Passengers pay for rides received through its App.

39. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

40. Each Defendant sets the amount of compensation that it pays its Drivers for providing ride-hailing services to Passengers on its App.

41. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of complaints that arise from its Drivers and Passengers.

42. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion, ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of compensation for ride-hailing services provided through the App.

43. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six hours if the Driver reaches a twelve-hour driving limit.

44. Each Defendant does not freely permit its Drivers to choose their routes. For example, if a Passenger complains to a Defendant about the route used by a Driver, each Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient route.

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 45. Each Defendant provides its Drivers with their work and pay by controlling the
2 dispatch of individual Passengers to individual Drivers through each Defendant's App. Each
3 Defendant's App controls which Drivers receive which ride requests and when.

4 46. Each Defendant controls and limits the information available to its Drivers and
5 Passengers through each Defendant's App, which each Defendant may change at any time
6 without notice.

7 47. When a Passenger requests an on-demand ride through Defendant's App, the App
8 shows and matches that Passenger with only one Driver at a time, regardless of the number of
9 nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App
10 shows and matches that Driver with only one Passenger at a time, regardless of the number of
11 nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on-
12 demand ride. Instead, they are selectively steered to one another through the centralized direction
13 of the App.

14 48. Each Defendant's App hides from its Passengers key information about its Drivers'
15 experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their
16 earnings in the way a true independent contractor or entrepreneur typically would.

17 49. Each Defendant's App allows its Drivers only approximately fifteen seconds to
18 accept or reject a trip request.

19 50. Drivers for each Defendant who consistently do not accept or reject trip requests
20 within the fifteen-second time limit may be temporarily logged out from each Defendant's App.
21 The length of this bar is within each Defendant's discretion.

22 51. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the
23 respective Defendant through its App of the Driver's trip status at every key step of the on-
24 demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of
25 the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to
26 constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

27 52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride
28 experience from which each Defendant derives its brand recognition, reputation, and value.

1 These rules, which each Defendant bills as “suggestions” or “tips,” cover matters such as music,
2 how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

3 53. Each Defendant retains the right to suspend or terminate its Drivers, or to cease
4 dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way
5 that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard.
6 These Driver behaviors can include, among other infractions, canceling too many rides, not
7 maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant
8 deems inefficient.

9 54. Each Defendant monitors, and ultimately controls, its Drivers through feedback it
10 solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its
11 Drivers’ performance. Each Defendant’s App solicits feedback and prompts its Drivers and
12 Passengers to rate one another from one to five stars for each Defendant’s benefit, as each
13 Defendant uses the ratings for its own discipline of Drivers.

14 55. Each Defendant determines the type of data and feedback its Drivers and Passengers
15 may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers
16 may provide feedback through its App.

17 56. Each Defendant uses information from its Passenger ratings to make decisions about
18 disciplining or terminating its Drivers. If the average rating of a Defendant’s Driver falls below a
19 certain threshold set by Defendant, Defendant may suspend or terminate that Driver from
20 providing ride-hailing services on Defendant’s App.

21 57. Each Defendant frequently experiments with software features that directly impact its
22 Drivers, creating an environment in which Drivers are subject to ever-shifting working
23 conditions, all determined in each Defendant’s discretion. According to Lyft, “We frequently test
24 driver incentives on subsets of existing drivers and potential drivers, and these incentives . . .
25 could have other unintended adverse consequences.” (See Lyft SEC 10-K, p. 20 [Filing Date:
26 February 28, 2020].) According to Uber, “[t]here are over 1,000 experiments running on our
27 platform at any given time.” (Deb et al., Under the Hood of Uber’s Experimentation Platform
28 (Aug. 28, 2018), <<https://eng.uber.com/xp/>> (as of May 1, 2020).)

1 58. Each Defendant introduces and then takes away features from its App in accordance
2 with its own business decisions. Each Defendant exerts control over its App, and thereby over its
3 Drivers.

4 **B. Part B of the ABC Test (“usual course of business”)**

5 59. Each Defendant’s Drivers are engaged in work that is within the usual course of each
6 Defendant’s business: the provision of on-demand rides. Each Defendant is a transportation
7 company that sells on-demand rides to its customers, i.e., its Passengers, who book and pay for
8 such rides through the Defendant’s App.

9 60. Drivers provide the on-demand ride. They are an integrated and essential part of each
10 Defendant’s transportation business. The immediate availability and temporal convenience of an
11 on-demand ride is the service that each Defendant sells to its Passengers.

12 61. Each Defendant publicly holds itself out to the public as a transportation company in
13 the business of selling on-demand rides.

14 62. Lyft has trademarked the slogan, “Your Friend with a Car.” Lyft advertises: “Get a
15 Ride Whenever You Need One”; “A ride in minutes”; and “Our drivers are always nearby so you
16 can get picked up, on demand, in minutes.”

17 63. Uber has trademarked the slogan, “Everyone’s Private Driver.” Uber advertises: “We
18 built Uber to deliver rides at the touch of a button”; “Always the ride you want”; “Request a ride,
19 hop in, and go”; “Sign up to ride. Rides on demand”; and “Get a reliable ride in minutes, at any
20 time and on any day of the year.”

21 64. Each Defendant represents to Passengers that it prescribes the qualifications of
22 Drivers on its App, as well as standards for Drivers’ quality of services. Each Defendant bills its
23 Passengers directly for the entire amount of the on-demand ride, and each Defendant’s Passengers
24 pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with
25 the quality of the on-demand ride provided through Defendant’s App, they report that problem to
26 Defendant, and Defendant may refund or cancel the Passenger’s fare.

27 65. Each Defendant is financially integrated with and dependent on its Drivers. Each
28 Defendant only generates income for its ride-hailing business if its Drivers transport and provide

rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

66. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

67. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on-demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

68. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

1 further improve the rider experience.” (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019],
2 emphasis added.) The prospectus identifies a “key factor” affecting Lyft’s performance as
3 “*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace.”
4 (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft’s
5 business model, “Why Lyft Wins,” Lyft’s IPO prospectus definitively answers: because Lyft is
6 “Driver-Centric.” (Id., at p. 3.)

7 70. Uber’s prospectus for its 2019 IPO also describes how Drivers, and the labor they
8 furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not
9 mince words: “If we are unable to attract or maintain a critical mass of Drivers . . . our platform
10 will become less appealing to platform users, *and our financial results would be adversely*
11 *impacted* Any decline in the number of Drivers . . . using our platform *would reduce the*
12 *value of our network and would harm our future operating results.*” (See Uber SEC S-1, *supra*,
13 at pp. 29-30, emphasis added.) Uber’s business model begins and ends with its Drivers.

14 **C. Part C of the ABC Test (“independently established trade, occupation, or**
15 **business”)**

16 71. Each Defendant’s Drivers are not engaged in an independently established trade,
17 occupation, or business of the same nature as the work they perform for each Defendant. Driving
18 itself is not a distinct trade, occupation, or business.

19 72. When driving for each Defendant, Drivers are not engaged in their own transportation
20 business, but are instead driving Passengers and generating income for the respective Defendant.

21 73. There are no specialized skills or training necessary to drive passengers on a ride-
22 hailing service. Consequently, each Defendant permits Drivers without any such skills or training
23 to provide on-demand rides on its App. For example, both of Defendant’s largest ride-hailing
24 options, “Lyft” and “UberX,” permit Drivers to offer ride-hailing services with an ordinary
25 driver’s license and a personal vehicle.

26 74. Each Defendant provides its Drivers with a necessary tool and instrumentality to
27 perform their on-demand, ride-hailing services—its App.

1 75. Each Defendant's App is the exclusive means by which Passengers and Drivers can
2 connect to, request, and provide each Defendant's on-demand rides.

3 76. Each Defendant's Drivers generally invest little to no capital to drive for each
4 Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a
5 smartphone and a car.

6 77. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents
7 its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running
8 their own independent businesses.

9 78. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers'
10 earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate
11 of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and
12 advertising of each Defendant's brand.

13 79. The limited economic levers that each Defendant leaves to its Drivers, such as
14 whether to drive at busier times or for more hours, are not consistent with the level of decision-
15 making normally exercised by entrepreneurs or those operating their own independent businesses.

16 80. Each Defendant limits its Drivers' ability to freely decline and cancel rides that
17 Drivers think will be unprofitable.

18 81. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus
19 to gauge their potential earnings based on demand for their services.

20 82. Each Defendant limits its Drivers' ability to share their accounts with other Drivers,
21 thereby curtailing its Drivers' ability to individually expand their business offerings.

22 83. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting
23 the ability of its Drivers to market themselves independently for repeat rides outside of
24 Defendant's App.

25 84. Each Defendant limits its Drivers' ability to take advantage of its App's financial
26 incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it
27 invites to participate in various, time-limited financial incentives that, for example, reward
28 Drivers for driving longer, or for driving at certain times and places. These financial incentives

1 are targeted to individual Drivers based on each Defendant's own opaque criteria as implemented
2 by the algorithmic decision-making engines in its App. By selecting which Drivers will be
3 invited to participate in which financial incentives and on what individualized terms, each
4 Defendant, in effect, chooses which Drivers are financial "winners" and "losers." Each
5 Defendant as the employer, not the Driver as an "entrepreneur," determines the Driver's earnings.

6 85. Each Defendant controls its Drivers' ability to earn compensation via its App, making
7 trade-offs between its Drivers' earnings and the price each Defendant charges to Passengers to the
8 benefit of each Defendant's profit.

9 86. Lyft describes these trade-offs in its 2019 annual SEC report reporting that "changes"
10 made by Lyft "may be viewed positively from one group's perspective (such as riders)" and
11 "negatively from another's perspective such as (drivers)." (See Lyft SEC 10-K, *supra*, at p. 24.)

12 87. Uber's SEC filings describe how the "greatest impact" on Uber's Take Rate (the
13 company's "take" on the difference between the Passenger's fare on a ride and what the ride-
14 hailing company pays out to the Driver) has "historically" come through Uber's unilateral
15 "adjustments to Driver incentives." (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO
16 prospectus, Uber freely admits the control it exerts over its Drivers' earnings—and the fact that
17 Uber's own profit comes at its Drivers' expense: "[A]s we aim to reduce Driver incentives to
18 improve our financial performance, we expect Driver dissatisfaction will generally increase."
19 (*Id.*, at p. 30.)

20 **IV. DEFENDANTS' UNLAWFUL MISCLASSIFICATION OF DRIVERS** 21 **RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.**

22 88. It is evident that neither Uber nor Lyft can meet their burden of showing that their
23 Drivers are independent contractors under California's ABC test for misclassification as adopted
24 in *Dynamex*, *supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test,
25 Defendants exercise control over their Drivers through their Apps, which, in combination with
26 their policies, function like algorithmic managers that effectively supervise Defendants' Drivers
27 like human managers. Under Part B of the ABC test, Drivers perform services within
28

1 Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC
2 test, Defendants cannot show that Drivers have established independent businesses.

3 89. Uber claims that “Drivers are at the heart of our service” and Lyft claims that Drivers
4 are “what makes Lyft ... Lyft.” But by misclassifying their Drivers, Defendants have devised an
5 unlawful business model that denies these very same Drivers the protections and benefits they
6 have rightfully earned as employees, and thereby gained an unlawful and unfair competitive
7 advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers,
8 undermines law-abiding competitors, evades Defendants' responsibility to contribute their share
9 as employers into the State's social insurance programs, and harms taxpayers who are often called
10 upon to address the negative consequences to Drivers and their families of Defendants'
11 exploitative employment practices.

12 **A. Defendants' unlawful misclassification deprives Drivers of their rights as**
13 **employees.**

14 90. Defendants' misclassification of their Driver workforce has allowed Defendants to
15 gain an unlawful competitive advantage over their competitors by circumventing the protections
16 and benefits that the law requires employers to provide to their employees. The laws violated by
17 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
18 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
19 benefits, and social insurance programs.

20 **1. Minimum Wages**

21 91. The law requires Drivers to be paid the applicable state or local minimum wage for
22 each hour worked, regardless of the compensation formula or method.

23 92. Defendants do not guarantee their Drivers a minimum wage under state and local
24 laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance
25 of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic
26 pricing pay surges, base rates, and minimum fares.

27 93. Defendants do not pay their Drivers for all their hours worked. Examples where each
28 Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

1 cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to
2 and returning from rides, and time spent logged on and monitoring each Defendant's App for ride
3 requests. Defendants cannot provide on-demand rides without the performance of these tasks.

4 94. Defendants have failed—and continue to fail—to meet their minimum wage
5 obligations with respect to their Drivers, including hours that are entirely unpaid and hours that
6 are paid at less than the applicable minimum wage.

7 **2. Overtime Wages**

8 95. The law requires Drivers to be paid the applicable overtime rate of pay—one-and-
9 one-half times or two times the Drivers' regular rate of pay—for all hours worked in excess of
10 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
11 seventh consecutive day of work in a workweek.

12 96. Defendants do not pay their Drivers overtime as required by law, despite the fact that
13 Drivers working overtime help Defendants to ensure the steady and constant supply of rides on
14 which Defendants' businesses depend.

15 97. Defendants have failed—and continue to fail—to meet these overtime pay obligations
16 with respect to their Drivers.

17 **3. Business Expenses**

18 98. The law requires Drivers to be paid or reimbursed for the necessary expenses in
19 performing their work.

20 99. Drivers pay for business expenses they incur in the course and scope of performing
21 their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear,
22 registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated
23 with using Defendants' Apps.

24 100. These expenses are substantial. For example, the Internal Revenue Service publishes
25 a "standard mileage rate," which currently estimates the cost of operating a vehicle for business
26 purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their
27 vehicles, without any reimbursement for this significant, work-related expense.
28

101. Defendants impose all the costs of operating the vehicles necessary to perform their ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business without them.

102. Defendants have failed—and continue to fail—to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

103. The law requires Drivers to be provided with one 30-minute duty-free meal period for a work period of more than five hours, and a second 30-minute duty-free meal period for a work period more than ten hours. The law further requires Drivers to be provided a ten-minute, paid, off-duty rest period for every four hours worked, or major fraction thereof. Authorized or required rest period time shall be counted as paid time worked.

104. Defendants do not provide for off-duty meal periods and do not authorize or permit paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the employee's regular rate of compensation for each failure, as required by law.

105. Defendants have failed—and continue to fail—to meet these meal and rest period obligations with respect to their Drivers.

5. Wage Statements

106. The law requires Drivers to receive regular and complete itemized wage statements from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly wages, piece rate wages, rest period pay, and nonproductive time pay.

107. Defendants do not provide Drivers with itemized wage statements in conformance with California law.

108. Defendants have failed—and continue to fail—to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

109. The law requires Drivers to be provided paid sick leave benefits as specified under California law and various local laws, including, but not limited to, the Los Angeles, San Diego, and San Francisco sick leave ordinances.

110. The law currently requires Drivers in San Francisco to receive health care expenditures of \$3.08 per hour. In recent years the rate has ranged between \$2.53 and \$3.08 per hour.

111. Drivers do not accrue the paid sick leave benefits or receive the health care expenditures from Defendants that employers are required to provide under state and local law.

112. Defendants have failed—and continue to fail—to meet these sick leave and health care expenditure obligations with respect to their Drivers.

7. Social Insurance Programs

113. The law requires Defendants to remit contributions or take other mandatory actions under the State’s social insurance programs, including, but not limited to, unemployment insurance, disability insurance, paid family leave, workers’ compensation, and San Francisco’s Paid Parental Leave Ordinance.

114. These programs are intended to provide wage replacement and other benefits in the event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to care for a family member, or is otherwise unable to work.

115. Defendants have failed—and continue to fail—to meet these social insurance program obligations with respect to their Drivers.

B. Defendants’ unlawful misclassification harms law-abiding competitors and would-be competitors.

116. Defendants’ unfair and unlawful treatment of their Drivers also confers an unfair advantage on Defendants over their law-abiding competitors and would-be competitors. Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full compensation and benefits they earn as employees to offer their ride-hailing services at an artificially low cost, decimating competitors and generating billions of dollars in private investor wealth off the backs of vulnerable Drivers.

117. Defendants’ misclassification of their Drivers allows both companies to unlawfully reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they

1 lawfully classified and compensated their Drivers as employees, including reimbursing Drivers
2 for their vehicle maintenance and fuel expenses.

3 118. Because driver compensation, along with vehicle maintenance and fuel expenses,
4 generally constitutes the lion's share of operating costs for a car service, Defendants' illicit
5 savings allow them to gain an out-sized competitive advantage over other transportation
6 providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and
7 vehicle costs of running a transportation service from well-resourced Defendants onto their
8 under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a
9 substantial competitive disadvantage.

10 119. In addition to avoiding paying Drivers for the full compensation and reimbursements
11 they earn as employees under state and local wage and hour laws, Defendants also avoid paying
12 their share of state and local payroll taxes and workers' compensation insurance premiums.

13 120. On information and belief, the illicit cost savings Defendants have reaped as a result
14 of avoiding employer contributions to state and local unemployment and social insurance
15 programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the
16 full compensation and benefits they are guaranteed under law as employees pushes the total
17 amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be
18 competitors who cannot enter the market—even higher.

19 FIRST CAUSE OF ACTION

20 INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF 21 BUSINESS AND PROFESSIONS CODE SECTION 17200 22 (Against all Defendants)

23 121. The People reallege and incorporate by reference each allegation contained in the
24 above paragraphs as if fully set forth herein.

25 122. Defendants have engaged, and continue to engage, in acts or practices that are
26 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
27 section 17200 of the Business and Professions Code. These acts or practices include, but are not
28 limited to, the following:

- a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;
- b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently \$13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);
- c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently \$15.59 per hour);
- d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently \$14.25 per hour);
- e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently \$13.00 per hour);
- f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);
- g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;
- h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;
- i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

- j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;
- k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;
- l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;
- m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;
- n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;
- o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;
- p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;
- q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;
- r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;
- s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;
- t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;
- u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

Communication: Public Comment Supplements (PUBLIC COMMENT)

v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C. Wage Order 9-2001, and other local employee protection laws.

123. Each Defendant's misclassification of its Drivers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provision of Labor Code section 2750.3, and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3) (Against all Defendants)

124. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

125. A.B. 5 permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in excess of 750,000, or by a City Attorney in a city and county.

126. Each Defendant continues to misclassify its Drivers as independent contractors.

127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to prevent the continued misclassification of each Defendant's Drivers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, that each Defendant, their successors, agents, representatives, employees, and all persons who act in concert with each Defendant, be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

2. Pursuant to Business and Professions Code section 17203, that the Court enter all judgments as may be necessary to restore to any person in interest any money or property that may have been acquired by violations of Business and Professions Code section 17200 as may be proved at trial;

3. Pursuant to Business and Professions Code section 17206, that each Defendant be assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions Code section 17200 et seq., as proven at trial;

4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL perpetrated against a senior citizen or disabled person, as proven at trial;

5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from continuing to misclassify its Drivers as independent contractors;

6. That the People recover their costs of suit; and

7. Such other and further relief that the Court deems appropriate and just.

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 Dated: May 5, 2020

Respectfully Submitted,

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3 Attorney General of California
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Communication: Public Comment Supplements (PUBLIC COMMENT)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

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

APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

RECOMMENDATION(S)

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

REPORT NARRATIVE:

The purpose of this City Council report is to request authorization for the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection Program (Attachment 1).

Since 1993, the City has met its obligation to provide for household hazardous waste disposal by participating in the Countywide Collection Program. This popular program provides City residents with the opportunity to participate in several collection events each month. The permanent collection center in San Martin has improved the convenience associated with these services. It is estimated that over 1,500 Morgan Hill households will participate in a collection event in the coming fiscal year.

In 2018, the Council authorized the City Manager to execute a three-year Countywide Household Hazardous Waste Agreement. Because this agreement includes the collection schedule for the year and the augmentation amount elected by the City, it requires an annual amendment. The First Amendment with the Fiscal Year 2019-20 collection schedule was approved by the Council last year. The sole purpose of this item is to approve the City's execution of the Second Amendment to the Agreement with the FY 2020-21 schedule and updated augmentation amount. Based on the City's experience, an annual augmentation of \$60,000 should ensure that all Morgan Hill residents desiring to participate in the program will be allowed to do so. This is identical to last year's amount and reflects expected program usage. Note that this augmentation exclusively includes funds generated by a Countywide fee and anticipates no expenditures from the General Fund.

COMMUNITY ENGAGEMENT: Inform

The recommended action is an extension of a long-standing program with no changes proposed so no engagement activities were conducted prior to presenting the amendment for Council consideration. Should the Second Amendment be approved, staff will continue to inform the public about the availability of the County program.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the Second Amendment and direct staff to further evaluate the provision of these services and the recommended augmentation amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The current agreement was approved by the City Council on May 2, 2018 (Attachment 3) and the First Amendment was approved on June 5, 2019 (Attachment 2). The Council has historically acted annually on either an agreement or an amendment to the agreement for over 20 years.

FISCAL AND RESOURCE IMPACT:

It is estimated that providing services to Morgan Hill residents participating in the County program will cost approximately \$110,000 in Fiscal Year 2020-21. Since the Countywide AB939 fee revenues credited to Morgan Hill for this purpose should total approximately \$156,000, it is not anticipated that any funding from the City's General Fund will need to be expended for this service. Any AB939 fee revenues remaining in the City's credit will be refunded to the City for use in promoting the program. The refunded amounts are deposited into the General Fund (010), GL#: 010.37706.

CEQA (California Environmental Quality Act):

Categorical Exemption

Approval of the Second Amendment is categorically exempt from environmental review under the Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Morgan Hill 2nd Amendment FY 2021
2. Executed First Amendment
3. Executed Morgan Hill HHW Agreement FY19-21

SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on June 19, 2018, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive, or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$54,700.00 to the Countywide HHW Program during Fiscal Year 2018-2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes COUNTY to use CITY's Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000.00 to the Countywide HHW Program during Fiscal Year 2019-2020 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000 to the Countywide HHW Program during Fiscal Year 2020-2021 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-2, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding

portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

//

2. Attachment C-2 "HHW Schedule For Collection Events for Fiscal Year 2020/2021" attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this Second Amendment to the AGREEMENT effective as of the last date shown below:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

Signature:

Signature:

Jeffrey V. Smith
County Executive

Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

Stephanie Safdi
Deputy County Counsel

Date: _____

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

ATTACHMENT C - 2

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2020/2021

HHW SCHEDULE FOR FISCAL YEAR 2020/2021

2020/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Wed,Thurs	1,2	San Martin	Permanent	
	Wed,Thurs	1,2	San Jose	Permanent	
	Fri,Sat	3,4	No Event	No Event	4th OF JULY WEEK
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
August	Fri, Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Saturday	15	Mountain View	Temporary	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27, 28,29	San Jose	Permanent	
September	Thurs, Fri	3,4	San Martin	Permanent	
	Thurs, Fri	3,4	San Jose	Permanent	
	Saturday	5	No Event	No Event	LABOR DAY WEEKEND
	Thurs, Fri	10,11,12	San Jose	Permanent	
	Saturday	12	Santa Clara	Temporary	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
October	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
November	Fri, Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	No Event	No Event	THANKSGIVING
December	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	No Event	No Event	CHRISTMAS
	Thursday	31	San Jose	Permanent	

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

HHW SCHEDULE FOR FISCAL YEAR 2020/2021-continued					
2021/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri, Sat	1,2	No Event	No Event	NEW YEAR's DAY
	Fri, Sat	8,9	San Martin	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	San Jose	
	Thurs,Fri,Sat	14,15,16	San Jose	San Jose	
	Saturday	16	Sunnyvale	Temporary	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
	Saturday	30	Santa Clara	Temporary	
February	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
March	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
April	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs, Fri,Sat	8,9,10	San Jose	Permanent	
	Saturday	10	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Saturday	24	Santa Clara	Temporary	
May	Fri, Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs, Fri	27,28	San Jose	Permanent	
	Saturday	29	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Saturday	19	Milpitas	Temporary	TBD
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

*SUBJECT TO CHANGE

4/6/2020

**FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD
HAZARDOUS WASTE COLLECTION PROGRAM**

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on July 1, 2018, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive, or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$54,700.00 to the Countywide HHW Program during Fiscal Year 2018-2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes COUNTY to use CITY's Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000 to the Countywide HHW Program during Fiscal Year 2019-2020 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

//

2. Attachment C-1 "HHW Schedule For Collection Events for Fiscal Year 2019/2020" attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this First Amendment to the AGREEMENT on the last date shown below:

COUNTY OF SANTA CLARA

Signature: _____

Sylvia Gallegos
Deputy County Executive

Date: _____

CITY OF MORGAN HILL

Signature: _____

Name: Christina Turner
Title: City Manager

Date: 6/27/19

APPROVED AS TO FORM AND LEGALITY

Michael Rossi
Lead Deputy County Counsel

Date: _____

APPROVED AS TO FORM:

Cynthia Hasson, Assistant City Attorney

Attachment: Executed First Amendment [Revision 1] (2735 : 2nd HHW Amend 2020)

ATTACHMENT C - 1

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2019/2020

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Thurs,Fri,Sat	4,5,6	No Event	No Event	4th OF JULY WEEK
	Fri,Sat	12,13	San Martin	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
August	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Saturday	10	Mountain View	Temporary	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs, Fri	29,30	San Jose	Permanent	
	Saturday	31	No Event	No Event	LABOR DAY WEEKEND
September	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Fri,Sat	6,7	West Valley	Temporary	TBD
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
	Saturday	28	Santa Clara	Temporary	
October	Fri,Sat	4,5	San Martin	Permanent	
	Saturday	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
November	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	No Event	No Event	THANKSGIVING
December	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	No Event	No Event	CHRISTMAS
2020/Jan	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	San Jose	
	Thurs,Fri,Sat	16,17,18	San Jose	San Jose	
	Saturday	18	Sunnyvale	Temporary	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2019/2020 **-continued**

2020/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
February	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
March	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
April	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	TBD
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	
May	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	30,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri	21,22	San Jose	Permanent	
	Saturday	23	No Event	No Event	MEMORIAL DAY WEEKEND
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
June	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Milpitas	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	

*SUBJECT TO CHANGE

Rev. 4/24/19

Attachment: Executed First Amendment [Revision 1] (2735 : 2nd HHW Amend 2020)

127-04-18-025

AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

This Agreement is made by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) on the 19th day of June, 2018.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring HHW to any Household Hazardous Waste Collection Event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.60 in FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021) on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected from any location within the county by a solid waste hauler operating

pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose, CA 95133.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

The projected AB939 HHW Implementation Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A, attached hereto and incorporated herein.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose. Estimated San Jose Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs are allocated on a per household basis and San Jose Facility Use Surcharge is allocated on a participation basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of locally produced materials; and,
- Conducting and supporting outreach and publicity to attain the 4% goal of household participation.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ◆ *San Martin, 13055 Murphy Avenue, San Martin*
- ◆ *San Jose, 1608 Las Plumas, San Jose*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. This program may, at the sole discretion of CITY, be subsidized by participating jurisdictions using outside funding not associated with AB939 HHW Fee. For purposes of definition, CESQG as defined is equivalent to Very Small Quantity Generator (VSQG) in 40 CFR 262.14.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

B) NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization as established in Public Resources Code Section 41904, is a nonprofit as defined in Section 501(c) (3) of the United States Internal Revenue Code, or a distinct operating unit or

division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218, as amended from time to time, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ 54,700 to the Countywide HHW Program during Fiscal Year 2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2019 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this agreement, COUNTY may seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, retail take-back collection and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants and the Oil Payment Program, from the California Department of Resources Recycling and Recovery (CalRecycle). The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion.

Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, County Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15, 2019. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or

arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of <u>Morgan Hill</u>	City Representative	<u>Christina Turner</u>
	Representative's Title	<u>City Manager</u>
	City Address	<u>City of Morgan Hill</u>
		<u>17525 Peak Ave.</u>
		<u>Morgan Hill, CA 95037</u>

Santa Clara County

Director
Consumer and Environmental Protection Agency
1553 Berger Drive
San Jose, CA 95112

34. CONTRACT EXECUTION

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

Attachments:

- A Projected Fiscal Years 2019, 2020, and 2021 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021
- C HHW Schedule of Collection Events for Fiscal Year 2019
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR
COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION
PROGRAM on the dates as stated below:

“COUNTY”

S. Joseph Simitian, President
Board of Supervisors

Date: JUN 19 2018

Signed and Certified that a copy of this document
has been delivered by electronic or other means to
the President, Board of Supervisors.

ATTEST:

JUN 19 2018
MEGAN DOYLE Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
 4/23/2018
16FE0EECFBF74C6...
Javier Serrano Date
Deputy County Counsel

“CITY”

CITY/TOWN OF Morgan Hill,
A municipal corporation

By: _____

Title: City Manager

Date: 6/8/18

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

Page 14 of 26

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Attachment A: Projected Fiscal Years 2019-2021 Annual HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$2.99 per HH	SJ Facility \$6.83 Surcharge	Variable Cost \$62 per Car	Abandoned Waste Disposal Cost \$0.05 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	17,832	713.28	38,979.51	\$ 101,346.73	\$ 53,317.68	\$ 6,718.88	\$ 44,223.36	\$ 891.60	\$ (3,804.80)	\$ 26,104.34	1,073	98
Cupertino	21,064	842.56	44,875.46	\$ 116,676.20	\$ 62,981.36	\$ 3,06.12	\$ 3,720.00	\$ 1,053.20	\$ 48,615.52	\$	60	4
Gilroy	16,258	650.32	49,766.41	\$ 129,392.67	\$ 48,611.42	\$ 1,075.34	\$ 40,319.84	\$ 812.90	\$ 38,573.17	\$ 15,294.16	897	151
Los Altos	11,660	466.40	18,006.34	\$ 46,816.48	\$ 34,863.40	\$ 4,937.12	\$ 28,916.80	\$ 583.00	\$ (22,483.84)	\$ 70,143.24	1,235	72
Los Altos Hills	3,108	124.32	3,164.89	\$ 8,228.71	\$ 9,292.92	\$ 871.26	\$ 7,707.84	\$ 155.40	\$ (9,798.70)	\$ 15,780.46	221	121
Los Gatos	13,289	531.56	25,570.37	\$ 66,482.96	\$ 39,734.11	\$ 7,974.75	\$ 32,956.72	\$ 664.45	\$ (14,847.07)	\$ 57,896.15	1,226	1,161
Milpitas	21,532	861.28	74,523.39	\$ 193,760.81	\$ 64,380.68	\$ 3,987.38	\$ 53,399.36	\$ 1,076.60	\$ 70,916.80	\$ 5,351.84	948	58
Monte Sereno	1,311	52.44	1,207.90	\$ 3,140.54	\$ 3,919.89	\$ 957.60	\$ 3,251.28	\$ 65.55	\$ (5,053.78)	\$ 11,285.40	153	141
Morgan Hill	14,415	576.60	51,502.27	\$ 133,905.90	\$ 43,100.85	\$ 1,875.95	\$ 35,749.20	\$ 720.75	\$ 52,459.15	\$ 54,639.20	1,458	27
Mountain View	35,595	1,423.80	54,389.71	\$ 141,413.25	\$ 106,429.05	\$ 5,572.91	\$ 88,275.60	\$ 1,779.75	\$ (60,644.06)	\$ 73,899.66	1,638	81
Palo Alto	29,124	0.00	43,478.06	\$ 113,042.96				\$ 1,456.20	\$ 111,586.76			
San Jose	332,574	13,302.96	683,263.56	\$ 1,776,485.26	\$ 994,396.26	\$ 116,026.35	\$ 824,783.52	\$ 16,628.70	\$ (175,349.57)	\$ 436,037.25	17,508	16,99
Santa Clara	46,535	1,861.40	166,527.00	\$ 432,970.20	\$ 139,139.65	\$ 1,062.63	\$ 115,406.80	\$ 2,326.75	\$ 166,034.37	\$ 82,450.70	3,191	1,47
Saratoga	11,226	449.04	19,744.70	\$ 51,336.22	\$ 33,565.74	\$ 5,439.47	\$ 27,840.48	\$ 561.30	\$ (16,070.77)	\$ 42,275.69	872	79
Sunnyvale	58,308	2,332.32	110,483.61	\$ 287,257.39	\$ 174,340.92	\$ 6,687.49	\$ 144,603.84	\$ 2,915.40	\$ (41,290.26)	\$ 63,029.32	2,683	981
Unincorporated	18,538	741.52	42,334.16	\$ 110,068.82	\$ 55,428.62	\$ 2,417.34	\$ 45,974.24	\$ 926.90	\$ 5,321.51	\$ 29.76	742	35
Total	652,369	24,929.80	1,427,817.34	\$ 3,712,325.08	\$ 1,863,502.55	\$ 174,910.78	\$ 1,497,128.88	\$ 32,618.45	\$ 144,164.42	\$ 954,237.18	33,904	25,62

Notes: No of HH based on 1/1/17 estimates. Disposal tonnage is based on FY2016-2017 actual. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2016-2017 actual participation.

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Attachment B: Estimated Annual HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021

FIXED COST		
Staff Salary and Benefits	.5 HMPM, Sr. HMS, 3 HMTs, Acct II, Sr MA, AMA, .8 OSIII,	\$1,210,647
County Admin Overhead		\$242,129
County Counsel		\$13,000
Phones and Communications		\$10,100
Facilities Lease Costs	San Jose	\$174,911
Vehicle Costs		\$32,500
Office Supplies and postage		\$1,825
Maintenance, Software		\$27,000
HHW Hotline		\$38,500
Garbage & Utilities		\$34,750
Membership & Dues		\$10,000
Training & Conference		\$4,600
Safety Wear		\$11,000
Printing		\$5,800
Other Services & Supplies		\$46,500
ESTIMATED ANNUAL TOTAL		\$1,863,262

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2018-2019***

2018/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Saturday	21	Sunnyvale	Temporary	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
August	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Mountain View	Temporary	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
September	Thurs,Fri,Sat	30,31,1	No Event	No Event	LABOR DAY WEEKEND
	Fri,Sat	7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
October	Saturday	29	Santa Clara	Temporary	
	Fri,Sat	5,6	San Martin	Permanent	
	Saturday	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
November	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	No Event	No Event	THANKSGIVING
December	Fri,Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	No Event	No Event	

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION
EVENTS FOR FISCAL YEAR 2018-2019 (Continued)**

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri,Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	San Jose	
	Thurs,Fri,Sat	17,18,19	San Jose	San Jose	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
February	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
March	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	28,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs	28	San Jose	Permanent	
	Fri & Sat	29 & 30	No Event	No Event	
					Caser Chavez Day
April	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Saturday	TBD	Los Altos	Temporary	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Saturday	27	Santa Clara	Temporary	
May	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri	23,24	San Jose	Permanent	
	Saturday	27	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Saturday	22	Milpitas	Temporary	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	

*SUBJECT TO CHANGE

11/16/2017

ATTACHMENT D: COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. Purpose

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a

centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2D (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

- E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

- F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Rev. 09/2016

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

Page 26 of 26



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Chris Ghione, Public Services Director
APPROVED BY: City Manager

APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

RECOMMENDATION(S)

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

The Covid-19 crisis and resulting shelter-in-place orders for the State of California and Santa Clara County have required significant changes in the overall City operations, including the closure of all the City owned recreation facilities. The City partners with the YMCA of Silicon Valley for operations of the Centennial Recreation Center. On March 17, the closure of the facility effectively reduced operations to providing minimal staffing for maintenance of the facility, support for the pickup of senior lunches and the CRC virtual membership. This closure resulted in furlough of most staff currently working at the facility for both the YMCA and City.

The City and YMCA have shared in a risk/reward scenario based on both expenses and revenues associated with operating the CRC. With the closure, both the revenues and expenses have gone to almost zero. City and YMCA staff agree that the closure of the facility and associated loss of revenue and expenses was not anticipated by the City or the YMCA during the development of the partnership agreement and believe the process of determining the ultimate risk/reward payment component is unclear. Additionally, developing a budget scenario for the next fiscal year with a risk/reward component is not feasible without understanding the future of the Covid-19 crisis and current and future shelter-in-place orders.

For the reasons outlined in this report, staff is recommending approval of an amendment to the agreement eliminating the risk/reward component for the current year and FY 2020-21, which is the final year of the agreement. The amendment will result in the City paying the YMCA only for expenses incurred in operating the CRC. The

amendment also requires the City and YMCA to review and update the partnership budget prior to December 31, 2020 based on known conditions relating to Covid-19.

The YMCA of Silicon Valley has been a long-standing partner with the City of Morgan Hill and is experiencing the same financial difficulties as the City, and the Mt. Madonna YMCA serving the South County has been significantly impacted. This amendment will support the ongoing partnership of the City and YMCA during these difficult times. The City and YMCA are working towards the next phase of the partnership as the agreement is set to expire in June 2021.

COMMUNITY ENGAGEMENT: Not Applicable

No community engagement has occurred for this item, as the amendment was negotiated between the City and YMCA staff.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve this amendment. This will likely result in prolonged legal review in determining responsibility relating to the risk/reward component of the agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the original agreement with the YMCA for operating the CRC in 2006. The Council has approved amending the agreement five times previously, including two 5-year extensions on the term of the agreement.

FISCAL AND RESOURCE IMPACT:

It is estimated that YMCA expenses will total \$1,290,000 for FY 2019-20, approximately \$430,000 below the budget. It is estimated that CRC membership revenue for FY 2019-20 will total \$3,550,000, approximately \$1,210,000 below budget. Under the proposed amendment there will be no risk/reward payment associated with this revenue and expense. For FY2020-21, the amendment would provide for the City to fund the YMCA costs in operating the CRC, which will be determined through the budget process.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. CRC 6th Amendment Signed

**SIXTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This SIXTH AMENDMENT TO AGREEMENT is made this _____ day of _____, 20____, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the Centennial Recreation Center and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment").

WHEREAS, CITY and YMCA entered into the Fourth Amendment to the Original Agreement on September 21, 2016 ("Fourth Amendment").

WHEREAS, CITY and YMCA entered into the Fifth Amendment to the Original Agreement on December 22, 2016 ("Fifth Amendment") and a Side Letter on March 8, 2018. The Original Agreement, First Addendum, Second Addendum, Third Amendment, Fourth Amendment, Fifth Amendment and Side Letter are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, due to the March 16, 2020 Santa Clara County Public Health Department Order to shelter in place, the Centennial Recreation Center has been generally closed to the public.

WHEREAS, closure of the facility and associated loss of revenue was not anticipated by the City or the YMCA at the time it entered into the Original Agreement or Amendments.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Paragraph 5.3 shall be amended and replaced in its entirety by the following:

The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including but not limited to a significant unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled. For Fiscal Year 2020/21 the City and YMCA agree to update the CRC budget based on known conditions by December 31, 2020.

2. Paragraph 5.5 shall be amended and replaced in its entirety by the following:

As part of the annual budget and work plan adoption process the parties will agree on a method for separately accounting for fee based activities health and fitness, aquatics facility operations and non-fee based activities. For Fiscal Year 2019/20 and Fiscal Year 2020/21 no payments shall be made by either party in relation to net operating gain or loss.

3. Paragraph 13.2 is amended and replaced per the March 8, 2018 Side Letter in its entirety by the following:

The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

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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/Deputy City Clerk_____
Michelle Bigelow_____
Print Name_____
Date:

APPROVED AS TO FORM:

City Attorney_____
Donald Larkin_____
Print Name_____
Date:_____
City Manager_____
Christina Turner_____
Print Name_____
Date:

YMCA of Silicon Valley

*Sandra B. Walker*By: *Sandra B. Walker*Title: *President / CEO*_____
Print Name and Title of Signer.

If Corporate: Chairman,

President or Vice President

Date: *May 12, 2020*_____
*Karla Jessup*By: *Karla Jessup*Title: *Chief Human Resources Officer*_____
Print Name and Title of Signer.

If Corporate: Secretary,

Assistant Secretary, Chief

Financial Officer or Assistant

Treasurer

Date: *May 12, 2020*

Attachment: CRC 6th Amendment Signed [Revision 2] (2738 : CRC Partnership Agreement Sixth Amendment)

126-04-06-003



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

March 8, 2018

YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051

Re: Side Letter to the Centennial Recreation Center Operating Agreement

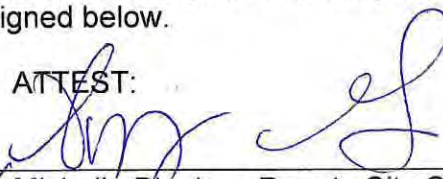
This is a Side Letter to that Operating Agreement, including all amendments thereto (hereinafter "Agreement"), initially entered into on June 29, 2006, between the City of Morgan Hill and YMCA of Silicon Valley (collectively, referred to as "the Parties") for operation of the Centennial Recreation Center. The Parties, without waiving any rights set forth in the Agreement, agree to delete the drug testing requirement by removing it from section 13.2 to read as follows:

13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis, ~~drug screen~~ and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

This Side Letter shall expire on June 30, 2021, concurrently with the expiration of the Agreement. Should the parties amend the Agreement prior to its expiration date, this Side Letter shall terminate, and the change to section 13.2 shall be incorporated into the amendment if appropriate.

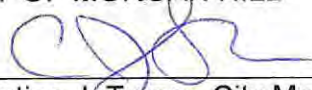
This Side Letter is not intended to and does not confer any rights or obligations on either party, and all terms and conditions of the Agreement, as amended, shall remain in full force and effect except as expressly set forth above. The Side Letter is effective upon the last date signed below.

ATTEST:

for 
Michelle Bigelow, Deputy City Clerk

Date: 4/12/18

CITY OF MORGAN HILL


Christina J. Turner, City Manager

Date: 4/10/18

APPROVED AS TO FORM:

for 
Donald A. Larkin, City Attorney

Date: 4-5-18

[Signatures Continued on Next Page]

Attachment: CRC 6th Amendment Signed [Revision 2] (2738 : CRC Partnership Agreement Sixth Amendment)

On behalf of YMCA of Silicon Valley, I consent to the above.

YMCA of Silicon Valley

Sandra B Walker

Title: Sandra Berlin Walker, President/CEO
Print Name and Title of Signer.

Date: March 14, 2018

**FIFTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This FIFTH AMENDMENT TO AGREEMENT is made this 22 day of December 2016, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the CRC and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment").

WHEREAS, CITY and YMCA entered into the Fourth Amendment to the Original Agreement on September 21, 2016 ("Fourth Amendment"). The Original Agreement, First Addendum, Second Addendum, Third Amendment and Fourth Amendment are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Section 18 shall be amended and replaced in its entirety by the following:

"18. Membership Reciprocity

18.1. Effective January 1, 2017, the CRC will no longer sell YMCA Silicon Valley ("YSV") memberships. Also effective January 1, 2017, CRC memberships will include the benefit of allowing CRC members access to all YSV locations and all YMCAs that have entered into a reciprocity agreement with the YSV ("Reciprocal YMCAs"). In exchange for this benefit, the City shall allow YMCA members who purchase memberships at YSV and Reciprocal YMCA locations to access the CRC at no additional charge. Use of the City's Aquatics Center is not included as part of reciprocal use.

18.2 The Parties agree that the membership reciprocity arrangement as outlined in Section 18 assumes equal use of YMCA facilities by CRC members and vice versa. Should use patterns indicate greater use of the CRC by YMCA members than CRC member use of YMCA facilities, the YMCA shall pay the City for each net member use (calculated as YMCA member uses of the CRC minus CRC member uses of the YMCA facilities) at the current inter-branch Day Pass rate of five dollars (\$5.00) per unit per visit. Conversely, the City will not pay the YMCA should use patterns indicate greater use of YMCA facilities by CRC members than YMCA member use of the CRC. Additionally, any YMCA member who regularly uses the CRC more than ten times per month *and* more than his or her home YMCA will be asked to transfer membership to the CRC. Any CRC member regularly using a specific YMCA more than ten times per month *and* more than the CRC will be asked to transfer membership to the YMCA. All reciprocal use of the CRC and YSV locations and Reciprocal YMCAs will be tracked by the YMCA. The YMCA will share use numbers with the City by the tenth day of each month. Payments (if applicable) to the City shall be made biannually.

18.3 CRC staff may set limits on attendance or restrict use of the CRC facility or programs for YMCA members in order to provide CRC members with priority use. YMCA staff may set limits on attendance or restrict use of YSV or Reciprocal YMCA facilities or programs for CRC members in order to provide YMCA members with priority use.

18.4 Both parties will monitor use and meet to evaluate and/or modify the terms of this reciprocity arrangement by June 30, 2017. Any modifications to this Section 18 shall be in writing signed by both parties. Notwithstanding Section 11 of this Agreement, both parties have the ability to terminate the membership reciprocity provisions and all terms outlined in this Section 18 by providing written notice to the other party ninety (90) days ahead of the intended termination date.

SIGNATURES ON THE FOLLOWING PAGE

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

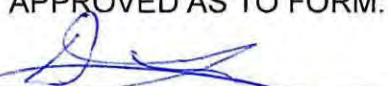
ATTEST:


 City Clerk/Deputy City Clerk

 for
 Michelle Wilson
 Print Name

Date: 12/22/16

APPROVED AS TO FORM:


 City Attorney

 Donald Larkin
 Print Name

Date: 12/20/2016

CITY OF MORGAN HILL


 City Manager

 for
 Steve Rymer
 Print Name

Date: 12/22/16

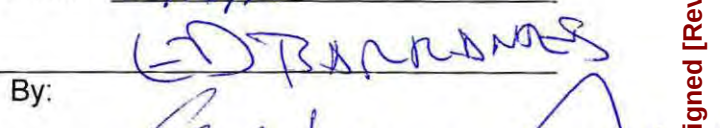
YMCA of Silicon Valley

By:

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

Date: 12/16/16

By:


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

Date: 12/19/2016

126-04-06-003

**FOURTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This FOURTH AMENDMENT TO AGREEMENT is made this 21st day of September 2016, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the Centennial Recreation Center and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment"). The Original Agreement, First Addendum, Second Addendum, and Third Amendment are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Section 18 shall be added to the Agreement to read in its entirety:

"18. Membership Reciprocity

18.1. Effective June 1, 2016, the CRC will sell YMCA Silicon Valley ("YSV") Memberships, which shall allow CRC members access to all other YMCA of the Silicon Valley locations. The City shall retain all monthly membership revenue and processing fees associated with the sale of YSV Memberships at the CRC.

In exchange for this revenue, the City shall allow YSV Members who purchase YSV Membership at YSV branch locations to access the CRC at no additional charge.

18.2 Effective June 1, 2016, other YSV branch locations shall be allowed to sell a Morgan Hill Aquatics Center Membership to members who possess a YSV Membership. This additional membership shall provide YSV Members access to the Morgan Hill Aquatics Center at no additional charge. The YMCA will retain ten percent (10%) of the monthly membership revenue for Morgan Hill Aquatics Center Memberships to cover administrative costs and shall pay the City the remaining ninety percent (90%) of revenue. Payments shall be made on a monthly basis.

18.3 CRC Members will be allowed to access YMCA locations for a reduced day fee rate. Likewise, members of other individual YSV Branch locations will be able to access the CRC (not the Aquatics Center) for the same reduced day fee rate.

18.4 The Parties agree to meet to evaluate the sale and use of YSV Memberships prior to January 31, 2017 and again prior to June 30, 2017. This arrangement assumes fairly equal use of other YMCA facilities by CRC members and vice versa. Should use patterns indicate a net difference in use greater than twenty five percent (25%) over the twelve (12) month period (YSV member use minus CRC YSV member use, divided by the lesser of the two), the Parties agree to amend this Agreement to adjust payments or use to more appropriately compensate for member use patterns.

18.5 The initial rates at the CRC for YSV memberships and day fees for YSV branch members shall be:

	Enrollment Fee	CRC Member Monthly Rates (Resident/ Non-Resident)	YSV Enrollment Fee	YSV Add-On Monthly Rates (Resident/ Non-Resident)
Adult Membership	\$50	\$63/\$67	\$55	\$27/\$23
Adult YSV Upgrade (no kids)			\$40	\$12/\$8
Adult Senior YSV Upgrade			\$40	\$7/\$3
Family Membership	\$75	\$90/\$96	\$75	\$38/\$32
Family YSV Upgrade (no kids)			\$60	\$23/\$17
Adult Plus	\$0	\$46/\$50	\$90 (Must upgrade family membership to YSV 3 adults membership)	\$30/\$20
Couple Senior / Special Hours	\$75	\$72/\$78	Must upgrade to adult, family or YSV senior membership.	
Senior / Special Hours	\$50	\$43/\$47	Must upgrade to adult, family or YSV senior membership.	
Senior YSV Upgrade (not special hours)			\$40	\$27/\$23
Youth/Teen	\$50	\$28/\$32	\$0	\$12/\$8
Core Class	\$0	FREE		
Specialty Class	\$0	Member Fee/Member Fee +\$10		
Swim Lessons	\$0	Member Fee/Member Fee + \$10		
Daily CRC Member Use at other YSV Locations		\$5 per visit per membership		
Daily YSV Member Use at CRC		\$5 per visit per membership		
YSV Aquatics Center Membership Add-On				\$25 (one member, any age), \$50 (2 or more members, any age)

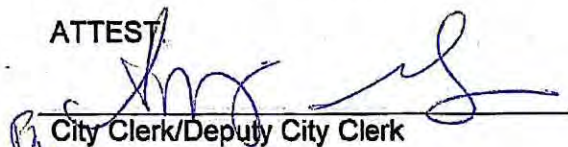
18.6 The Parties agree that adjustment to fees outlined in Section 18.5 may be necessary to maintain consistency between CRC fees and YMCA fees for YSV membership. The City Manager has authority to adjust fees outlined in Section 18.5. This authority does not include other general CRC fees for membership and daily rates, which must be approved by the City Council.

18.7 Both Parties have the ability to terminate membership reciprocity and all terms outlined in Section 18 of this Agreement by providing written notice to the other Party ninety (90) days ahead of the intended termination date.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:


 City Clerk/Deputy City Clerk

Michelle Wilson

Print Name

Date: 9/22/16

APPROVED AS TO FORM:

for 
 Interim City Attorney

~~Gary M. Baum~~ Donald A. Larkin
 Print Name

Date: 09/20/16

Resolution No. 16-089

CITY OF MORGAN HILL

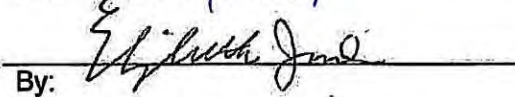

 City Manager

Steve Rymer

Print Name

Date: 9/21/16

YMCA of Silicon Valley

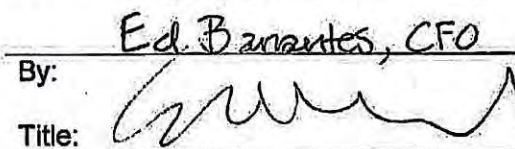
By: 

Title:

Elizabeth Jordan, COO
 Print Name and Title of Signer.

If Corporate: Chairman,
 President or Vice President

Date: 9/2/16

By: 

Title:

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

Date: 9/16/16

Exhibit A

126-04-00-003

**THIRD AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This THIRD AMENDMENT TO AGREEMENT is made this 4th day of April, 2011, by THE CITY OF MORGAN HILL a municipal corporation ("CITY") and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non-Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010. CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015.

WHEREAS, the Original Agreement and the amendments made by the First and Second Addendums thereto are hereinafter collectively referred to as the "Agreement" and are attached hereto as Exhibit A.

WHEREAS, Section 2.3 of the Agreement provides for two (2) five (5) year extensions by written mutual agreement and the parties have agreed to the first extension of the terms of the Agreement. Additionally, the Agreement provides for extensions beyond these first two (2) five (5) year extensions based upon mutual agreement.

WHEREAS, CITY and YMCA desire to extend the term of the Agreement for an additional five (5) years and make other modifications to the Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. The Agreement shall be amended to reflect the new address of the YMCA of Silicon Valley so that Paragraph 1 shall be amended and replaced in its entirety by the following:

"1. Parties to the Agreement.

City is the City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Silicon Valley, 80 Saratoga Avenue, Santa Clara, California 95051, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Phone: 408-351-6413
Fax: 408-298-0143"

2. The term of the Agreement shall be extended to June 30, 2021 so that Paragraph 2.1 of the Agreement shall be amended and replaced in its entirety by the following:

"2.1 The term of this Agreement shall terminate June 30, 2021 unless earlier terminated by either party as provided in Section 2 or extended as provided in Section 2.3."
3. Paragraph 3.2 sub section e. of the Agreement shall be amended and replaced in its entirety by the following:

"e. Reporting on status of operations at the CRC as requested."
4. Paragraph 3.6 of the Agreement shall be amended and replaced in its entirety by the following:

"3.6 The City Community Services Director and the YMCA Chief Operating Officer shall meet periodically to evaluate CRC operations. Reports shall be provided annually to the City Council and the Board of Directors of the YMCA of Silicon Valley on member satisfaction data and data on the financial performance of the CRC. The Director and Chief Operating Officer may involve other City and YMCA staff in development of the annual report as desired."
5. Paragraph 5.1 sub section c. of the Agreement shall be amended and replaced in its entirety by the following:

"c. The proposed annual budget and work plan will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6."

6. Paragraph 5.2 of the Agreement shall be amended and replaced in its entirety by the following:

"5.2 As part of the initial annual budget, the City shall pay YMCA an agreed upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC or other City facilities in support of the CRC membership. The first three payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15 and January 15. The final quarterly payment shall be made within 15 days following September 1 of each year. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan."

7. Paragraph 7 of the Agreement shall be amended and replaced in its entirety by the following:

"7. Integration with other Facilities.

The parties agree to discuss and consult on recreational and fitness programs offered to Morgan Hill residents including, but not limited to, teens and seniors at other City or YMCA owned or operated venues."

8. Paragraph 8.2 shall be removed from the Agreement.

9. Paragraph 9.2 of the Agreement shall be amended and replaced in its entirety by the following:

"9.2. Members of the CRC who signed up for membership prior to April 1, 2016 shall be allowed to utilize five other YMCA of Silicon Valley facilities until September 1, 2016. After September 1, 2016 access to other YMCA facilities shall not be included as a benefit of CRC membership. After April 1, 2016 no portion of processing fee paid by CRC members shall be credited to the YMCA of Silicon Valley."

10. Paragraph 14 of the Agreement shall be amended and replaced in its entirety by the following:

"14 Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail charges and postage prepaid

and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City notice shall be addressed as follows:

City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill CA 95037
Phone 408-779-7271
Fax 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill CA 95037
Phone 408-779-7271
Fax 408-779-3117

In the case of notices to be given to the YMCA notice shall be addressed as follows:

President and CEO, YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Phone: 408-351-6413
Fax: 408-298-0143

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section."

11. Exhibits A and B to the Agreement shall be replaced in their entirety by Revised Exhibits A and B to this Third Amendment.

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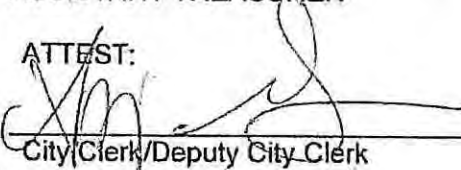
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12. All terms and conditions of the Agreement as amended as attached as Exhibit A shall remain in full force and effect.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:

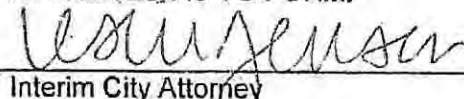

City Clerk/Deputy City Clerk

for Michelle Wilson

Print Name

Date: 4/28/16

APPROVED AS TO FORM:


Interim City Attorney

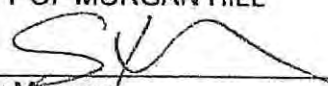
for Gary M. Baum

Print Name

Date: 04/25/16

Resolution NO. 16-017

CITY OF MORGAN HILL

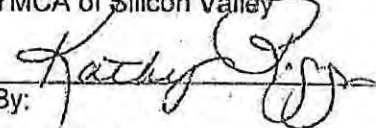

City Manager

Steve Rymer

Print Name

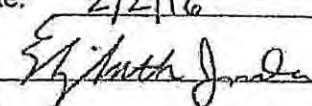
Date: 4/27/16

YMCA of Silicon Valley


By:

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

Date: 2/2/16


By:

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

Date: 2/2/16

126-04-06-003

**SECOND ADDENDUM TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This SECOND ADDENDUM TO AGREEMENT is made this 23rd day of December, 2015, by THE CITY OF MORGAN HILL a municipal corporation CITY and YMCA OF SILICON VALLEY formerly known as YMCA of Santa Clara Valley a California Non Profit Corporation ("YMCA") for operation of the Centennial Recreation Center CRC located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS the CITY and YMCA entered into the Agreement made as of June 29, 2006 for operating the CRC.

WHEREAS the CITY and YMCA entered into the First Addendum to the Agreement on October 10, 2010.

WHEREAS the City and YMCA desire to extend the term of the Agreement, but need additional time to discuss details of the extension.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

All terms and conditions of the Agreement as amended as attached as Exhibit A shall remain in full force and effect except that Paragraph 2.3 of the agreement shall be amended to reflect a change of the extension deadline, which shall be extended to February 5, 2016, the new language for Paragraph 2.3 of the Agreement which is amended and replaced in its entirety by the following:

- "2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010, for the first extension, and no later than February 6, 2016, for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP."

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS
 (1) CHAIRPERSON OF THE BOARD PRESIDENT OR VICE PRESIDENT AND
 (2) SECRETARY ASSISTANT SECRETARY CHIEF FINANCIAL OFFICER OR
 ASSISTANT TREASURER

ATTEST:

Deputy [Signature]
 City Clerk
 Date: 1/4/16

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 12/23/15

APPROVED AS TO FORM:

for [Signature]
 City Attorney
 Date: 12/23/15
 Council Approval:
12/16/15

YMCA OF SILICON VALLEY

[Signature]
 By: Kathy Riggs
 Title: President and CEO
 Date: 12/23/15

[Signature]
 By: Elizabeth Jordan
 Title: Chief Operating Officer
 Date: 12/22/15

126-04-06-003

Exhibit A

**FIRST ADDENDUM TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This FIRST ADDENDUM TO AGREEMENT is made this 5th day of October, 2010, by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, YMCA OF SILICON VALLEY (formerly known as YMCA OF Santa Clara Valley), a California Non-Profit Corporation ("YMCA") for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, the CITY and YMCA entered into the Agreement made as of June 29, 2006, for operating the CRC

WHEREAS, Section 2.3 of the Agreement provides for two five-year extensions by written mutual agreement and the parties have agreed to the first extension of the terms of the Agreement.

THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

All terms and conditions of the Agreement, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the term of the Agreement shall be extended to June 30, 2016, so that Paragraph 2.1 of the Agreement shall be amended and replaced in its entirety by the following:

"2.1 The term of this Agreement shall terminate June 30, 2016, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3."

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:

Julie Drimakis, Deputy
City Clerk
Date: 5/16/2011

CITY OF MORGAN HILL

[Signature]
City Manager
Date: 5-13-11

APPROVED:

[Signature]
Risk Manager
Date: May 11, 2011

YMCA of Silicon Valley

[Signature]
By:
Title: Executive Vice President
Date: 10/05/10

APPROVED AS TO FORM:

[Signature]
City Attorney
Date: May 12, 2011
Council reso. 10/20/10

[Signature]
By:
Title: Chief Financial Officer
Date: 10/05/10

00418

**CITY OF MORGAN HILL
AND
YMCA
COMMUNITY RECREATION CENTER
OPERATING AGREEMENT**

This Agreement ("Agreement") is made this 29 day of JUNE, 2006 ("Effective Date"), by and between the City of Morgan Hill, a California general law city ("City"), and the YMCA of Santa Clara Valley, a California non-profit corporation ("YMCA") for operations of the Centennial Recreation Center ("CRC") located at 171 W Edmundson Avenue, Morgan Hill, California.

Recitals

- A. The City owns the newly constructed CRC, a 52,000 square foot community recreation center which includes a fitness room, gymnasium, an indoor swimming pool, a senior wing and a teen wing.
- B. The YMCA is experienced in operating health and fitness facilities and is interested in expanding its programs in the Morgan Hill area.
- C. The City currently operates an Outdoor Aquatics Center, a Community Cultural Center and certain recreational programs.
- D. The parties believe they can maximize the programs offered and better control the expenses of operating the CRC if the City, using City employees, provides aquatics and teen programming while the YMCA, using YMCA employees, provides health and fitness and senior services at the CRC.
- E. The City and YMCA desire to take advantage of the YMCA's experience in offering membership-based health and fitness programming while ensuring that the City remains responsible to the City Council and the residents of Morgan Hill for the CRC's operations including its financial performance.
- F. The parties desire to set forth the terms and conditions of their relationship in this Agreement with further details of the actual CRC operations to be set forth in a Center Operating Plan. The initial Center Operating Plan ("COP") is attached to this Agreement as Exhibit A; however it is intended that specific services provided by each party and the operating relationships may change over the course of this Agreement in order to meet community needs.
- G. The City and YMCA commit themselves to work together in the spirit of partnership for the success of the CRC, subject to the terms and conditions of this Agreement, and to deal with each other with fairness, respect, cooperation, and good faith in the operation of the CRC and performance of this Agreement. The City and YMCA commit to promptly resolve disputes over this Agreement and/or CRC operations.

NOW THEREFORE, the parties agree as follows.

Agreement

1. Parties to the Agreement.

City is the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Santa Clara Valley, 1922 The Alameda, 3rd Floor, San Jose, California 95126, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Santa Clara Valley
1922 The Alameda, 3rd Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

2. Term.

- 2.1 The term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2011, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3.
- 2.2 In addition to the provisions of Section 5.6 and 5.7 below, either party may request an early termination of this Agreement after June 30, 2009. Such a request must be made in writing, and must be made a minimum of six months in advance of proposed termination date, unless City and YMCA mutually agree to a lesser time. Provided that such written request is timely made, termination shall occur upon the specified termination date.
- 2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010, for the first extension, and December 31, 2015, for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP.

3. Management and Staffing.

- 3.1 City and YMCA agree to cooperatively manage and operate the CRC as a first class recreation center for the benefit of the public. A "Recreation Supervisor," or other classification as determined by the City, shall be employed by the City and responsible for all CRC operations. The initial COP is attached to this Agreement as Exhibit A and is incorporated into this Agreement by this reference. The COP, among other things, details staff duties and operating relationships. The parties hereby authorize the Morgan Hill City Manager ("City Manager") and YMCA of Santa Clara Valley CEO ("CEO") to modify in writing the COP from time to time as may be necessary to facilitate efficient operations of the CRC consistent with the intent of this Agreement.
- 3.2 The Recreation Supervisor shall be employed by the City. The City shall provide the YMCA with opportunities for meaningful and substantial input on the selection and ongoing performance of the Recreation Supervisor. The Recreation Supervisor shall have operational authority for the management and operation of the CRC. The duties and responsibilities of the Recreation Supervisor shall include, but not be limited to:
- a. Managing the CRC so that it is developed and maintained as a first class recreational center.
 - b. Preparing and administering the annual budget and work plan for development and operation of the CRC.
 - c. Preparing the annual progress report for the preceding fiscal year for approval by the City Council.
 - d. Organizing, scheduling, and directing YMCA and City employees assigned to the CRC.
 - e. Reporting on status of operations at the CRC as requested, including, but not limited to, providing a monthly report intended for the City Council and YMCA Board of Directors.
 - f. Performing all duties that are usual and customary and normally associated with the position of a recreation supervisor of a public recreation center.
- 3.3 Notwithstanding the parties' agreement to cooperatively manage and operate the CRC, City employees working at the CRC are employed solely by the City, and the City retains all responsibilities associated with their employment. YMCA employees working at the CRC are employed solely by the YMCA, and the YMCA retains all responsibilities associated with their employment. The parties agree to cooperate fully with each other in resolving any employment issues. The YMCA agrees to indemnify and hold the City, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC YMCA employee acting within the scope of employment. The City agrees

to indemnify and hold the YMCA, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC City employee acting within the scope of employment.

- 3.4 Performance issues on the part of the Recreation Supervisor may be raised by either party and addressed through the dispute resolution process provided for in Section 11.1 of this Agreement.
- 3.5 The CRC staff shall be comprised of employees of both the City and the YMCA. It is acknowledged and agreed between the parties that to achieve the optimum performance of the total CRC staff, City employees may be directed to work at the CRC on YMCA activities within the scope of this Agreement and YMCA employees may be directed to work at the CRC on City activities within the scope of this Agreement.
- 3.6 The City Recreation and Community Services Director and the YMCA Vice President of Operations shall meet periodically to evaluate CRC operations and shall prepare no later than December 31 of each year and present as soon as practicable thereafter an annual report on CRC operations to the City Council and the Board of Directors of the YMCA of Santa Clara Valley. The report shall include member satisfaction data as well as data on the financial performance of the CRC. The Director and Vice President may involve other City and YMCA staff in development of the annual report as desired.

4. Grounds and Facilities.

- 4.1 The City shall retain title to the grounds, buildings, structures and all other improvements, and its equipment. Subject to approval of the Recreation Supervisor, certain equipment owned by the YMCA may be used at the CRC; provided, however, any such equipment must be identified in a writing attached to the COP and the equipment must be clearly marked as YMCA property on the equipment itself.
- 4.2 The City and YMCA agree that both parties shall continue joint use of the grounds, buildings, equipment and other improvements at the CRC in furtherance of this Agreement. The Recreation Supervisor shall determine the most effective use of the CRC grounds, buildings, equipment and other improvements subject to the approval of the City's Director of Recreation and Community Services, or such other individual designated in writing by the City Manager, in consultation with the Vice President of Operations for the YMCA, or such other individual designated in writing by the YMCA CEO.

5. Budget and Funding.

- 5.1 The parties agree that it is the intent of the arrangement governed by this Agreement that revenues generated by CRC programs and activities will be sufficient to cover operating expenses (including, but not limited to, maintenance and contributions to any capital improvement reserves established in the budget) no later than fiscal year 2008/09. (For purposes of this Agreement, "fiscal year" shall mean the twelve consecutive months beginning July 1 of the year first referenced and ending June 30 of the year last referenced. For example, "fiscal year 2008/09" means the period beginning July 1, 2008 and ending June 30, 2009.)
- a. In February of each year, the Recreation Supervisor and the Executive Director of the Mount Madonna YMCA ("Executive Director") shall develop budget assumptions related to the CRC operating budget for the following fiscal year.
 - b. Before March 15, or on another mutually-agreed upon date, the Recreation Supervisor and Executive Director shall develop the preliminary proposed annual CRC operating budget and workplan. The budget will include estimated costs and revenue from health and fitness activities and senior services as well as agreed-upon capital improvement reserves. The YMCA may agree to the preliminary proposed CRC operating budget and workplan or terminate this Agreement subject to the notification provisions of section 5.6.
 - c. The proposed annual budget and work plan and the latest progress report will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6.
 - d. Once the annual budget and work plan is approved by the City Council, that annual budget and work plan shall be implemented by the Recreation Supervisor for the upcoming fiscal year.
- 5.2 As part of the initial annual budget, the City shall pay YMCA an agreed-upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC. All the agreed-upon services shall be provided at the CRC. The foregoing payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15, January 15 and April 15. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan.

- 5.3 The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including, but not limited to, a significant unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled.
- 5.4 The City shall provide YMCA with monthly reports on the operating position of the CRC. Both parties agree to maintain agreed-upon customer service standards and accessibility over the course of the year, while recognizing that operations may change over the year in order to meet financial objectives for CRC operations.
- 5.5 As part of the annual budget and work plan adoption process, the parties will agree on a method for separately accounting for fee-based activities (health and fitness, aquatics, facility operations) and non-fee-based activities (senior and teen centers). A budget worksheet for the initial year is attached as Exhibit B. A final annual budget reconciliation shall be prepared no later than October 1 of each year. Any net operating gain for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be distributed to the parties as follows: 60% to the City and 40% to the YMCA. Any net operating loss for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be paid by parties as follows: 60% from other City funds and 40% by transfer of funds from the YMCA to the City no later than thirty (30) days after receipt of the final budget reconciliation.
- 5.6 In the event that the YMCA does not agree to the annual budget and work plan as approved by the City Council, this Agreement shall terminate. The YMCA will notify the City in writing that this Agreement shall be terminated six months from the date of notification, or on another date as agreed-upon by the parties. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.
- 5.7 In the event that the YMCA objects to the candidate selected by the City for the position of Recreation Supervisor, either at the initial hire or in

future hiring actions, the YMCA may terminate this Agreement by giving the City six months advance written notice. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.

6. Programming and Pricing.

- 6.1 The City and YMCA will agree upon programming and pricing as part of the annual budget and work plan process. The initial programming and pricing is as described in the COP. The parties will agree on which existing recreational and fitness programming currently offered by the City or the Mt. Madonna YMCA, if any, will be moved to the CRC.
- 6.2 The parties acknowledge that the scope of community services offered at the CRC, including youth, family, intergenerational, special event, and adaptive programming, may evolve over time.
- 6.3 Initial program pricing and the pricing philosophy for the CRC are provided in Section 2 of the COP.
- 6.4 It is intended that the annual City Council approval of the budget and work plan will authorize the City Manager to adjust prices and programming as needed in accordance with a City Council adopted policy or directive.

7. Integration with other Facilities.

The parties agree to consult with each other prior to offering new recreational and fitness programs to Morgan Hill residents including, but not limited to, teens and seniors at other City or YMCA owned or operated venues.

8. Senior Services.

- 8.1 The parties agree that the YMCA will provide senior program services as defined in the COP at the CRC. The YMCA currently has a contract with the County of Santa Clara to provide a Senior Nutrition Site in Morgan Hill. It is anticipated that the YMCA will relocate the Senior Nutrition Site to the CRC. In developing the annual budget, as long as the County pays for the direct costs of the Senior Nutrition Site, there will be no charge to the City for these services. At any time that the County ceases paying the YMCA

for a Senior Nutrition Site at the CRC, inclusion of this service and the cost of providing it will be considered as part of the annual budget and work plan.

- 8.2 As part of the annual budget and work plan, the City will provide an annual stipend to the YMCA to subsidize the operation of the Senior Center core program. In Fiscal Year 06/07, this will be \$37,500. In the first full year of operation, Fiscal Year 07/08, this will increase to \$75,000. Increases in future years will be agreed upon by the parties as part of the annual budget and work plan process.

9. Revenues and Marketing.

- 9.1 The parties agree that Morgan Hill residents are intended to be the primary beneficiaries of the CRC, although the CRC will be available for the use of non-residents as well. To that end, the parties desire to develop a marketing plan and activity program pricing structure that will accomplish the foregoing goal and will provide adequate revenues to cover annual operating expenditures. The parties also intend to jointly and/or individually seek grants or other sources of funding which may be available to provide existing or expanded services and programs at the CRC. Both parties agree to cooperate fully, one with the other, in such endeavors. Implementation of this Section is addressed more fully in the COP.
- 9.2 Members of the CRC will be able to utilize other YMCA of Santa Clara Valley facilities. Half of the processing fee paid by members who chose this option will be credited to the YMCA of Santa Clara Valley.
- 9.3 The parties agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation, or ancestry, in any activity or membership offered pursuant to this Agreement.

10. Audits, Record Retention and Inspection.

- 10.1 The parties understand and agree that the City is a public entity and as such is subject to various laws including, but not limited to, the California Public Records Act, and as such members of the public as well as representatives of governmental agencies have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or other records of each party relating to this Agreement. Such material, including, but not limited to, all pertinent costs, accounting, and financial records shall be retained by each party for a period of at least five (5) years after their creation date.

- 10.2 Each party grants the other party, at the requesting party's expense, the right to conduct at any reasonable time an audit and re-audit of the books, records and business conducted related to this Agreement and observe the operation of the business so that the accuracy of the above records and any of the invoices for services provided can be confirmed.
- 10.3 In the event of any dispute between the parties as to financial matters, the parties agree, as their sole remedy, to mutually choose an independent auditor to conduct an investigation of the disputed matter. If the parties are unable to mutually choose an independent auditor, each party shall identify one auditor and those two auditors shall choose a third, independent auditor to conduct the investigation. The auditor so named shall be deemed to have been mutually chosen by the parties. If, as a result of the investigation of the mutually chosen auditor, any adjustment in payment is required by either party, such payment shall be made within sixty (60) days of receipt of written demand for same. The decision of the mutually chosen auditor shall be final and binding upon the parties.
- 10.4 If either party triggers the process set forth in section 10.3 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 10.3.

11. Dispute Resolution.

- 11.1 Operational Issues. Except as otherwise specifically set forth in this Agreement, any dispute concerning day to day operational decisions in the implementation of this Agreement as further detailed in the COP shall be resolved by the Recreation and Community Services Director and the Vice President of Operations of the YMCA. For any disputes which cannot be resolved by these individuals, either party may request that the Morgan Hill City Manager resolve the dispute after first consulting with the YMCA CEO. The decision of the City Manager shall be final.
- 11.2 Other Issues. Should other disputes arise between the parties for which a dispute resolution mechanism or remedy is not otherwise specifically set forth in this Agreement (such as, for example, in section 10.3), and the parties are unable to resolve such matters between themselves by negotiation after the complaining party has provided the other party written notice of the complaint and a reasonable opportunity to cure the problem, then such disputes shall be resolved in the courts of the County of Santa Clara in accordance with applicable law and procedure, including any claims procedures that may be required by law with respect to a general law city.

- 11.3 Termination Option. If either party seeks judicial redress of a dispute as set forth in section 11.2 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 11.2.

12 Indemnification.

- 12.1 The City agrees to indemnify, defend and hold harmless YMCA, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with City's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the City by any person pursuant to this Agreement. City's duty to indemnify YMCA shall survive the expiration or other termination of this Agreement.
- 12.2 YMCA agrees to indemnify, defend and hold harmless City, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with YMCA's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the YMCA by any person pursuant to this Agreement. YMCA's duty to indemnify City shall survive the expiration or other termination of this Agreement.

13. Insurance.

- 13.1 General Requirements. Without limiting YMCA's indemnification of City or limiting City's indemnification of YMCA, YMCA and City shall each provide and maintain at its own expense throughout the term of this Agreement the hereinafter listed programs of insurance covering its operations hereunder. Such insurance provided by YMCA and by City shall be provided by insurers satisfactory to City's Risk Manager and satisfactory to the YMCA's Risk Manager, respectively, and a certificate or other evidence of coverage and certified copies of additional insured endorsements satisfactory to City and YMCA, respectively, shall be delivered to the City's Risk Manager and to the YMCA's Risk Manager, respectively, before the effective date of this agreement. It is recognized

that City currently provides general liability, workers' compensation, and auto liability insurance coverage through a combination of self insurance, pooled coverage, and purchased excess insurance coverage. Such evidence of coverage shall specifically identify this Agreement and shall contain the express condition that City or YMCA, as applicable, is to be given at least thirty (30) days advance written notice of any modification or termination of any program of insurance. All such insurance provided by YMCA shall be primary to and not contributing with any other insurance maintained by City. With the exception of workers' compensation insurance, all such insurance provided by YMCA and by City shall name "City of Morgan Hill, its elected officials, officers, employees, agents and representatives" and "YMCA of Santa Clara Valley, its officers, employees, agents, and representatives," respectively, as additional insureds.

At all times during the term of this Agreement, YMCA and City shall provide and maintain the following forms and amounts of insurance:

- a. Liability. Comprehensive General Liability Insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises-operations, products/completed operations, independent contractors, advertising, contractual, broad form of property damage, and personal injury with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and an aggregate limit of not less than Four Million Dollars (\$4,000,000).
- b. Workers' Compensation. Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability.
- c. Comprehensive Automobile Liability. Endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than Two Million Dollars (\$2,000,000) per accident.
- d. Failure to Comply. Failure on the part of YMCA or City to procure or maintain required insurance shall constitute a material breach of contract upon which City or YMCA, respectively, may immediately terminate this Agreement. Notwithstanding this requirement, in the event that YMCA or City fails to procure or keep in effect at all times the insurance coverage required herein, City or YMCA, respectively, may in its discretion procure said insurance on behalf of YMCA or City, respectively, and charge YMCA or City, respectively, the full cost of the insurance and administrative costs.

- 13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided

at the CRC. This includes tuberculosis, drug screen and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

14. Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, charges and postage prepaid, and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City, notice shall be addressed as follows:

City Manager
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-3117

In the case of notices to be given to the YMCA, notice shall be addressed as follows:

President and CEO
YMCA of Santa Clara Valley
1922 The Alameda, Third Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section.

15. Amendments.

This Agreement shall only be amended by a writing signed by both parties after approval by the City Council and YMCA Board of Directors.

16. Appropriations.

The payment of any obligations of the City described in this Agreement is subject to the annual appropriation of funds for said payments by the City Council. This provision does not affect any obligation of the City for payment of funds attributable to a fiscal year for which an annual budget has been approved.

17. Miscellaneous Provisions.

- 17.1 Good Faith and Cooperation. The City and YMCA agree that it is in their mutual best interest and in the best interest of the public that the CRC be operated and managed as herein agreed and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.
- 17.2 Severability. If any provision of this Agreement, or the application of such provision to any party or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to such party or circumstance other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.
- 17.3 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to that state's conflict of laws principles.
- 17.4 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior to contemporaneous written or oral negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof.
- 17.5 Parties in Interest. Nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any party other than the YMCA and the City nor shall anything in this Agreement relieve or discharge the obligation or liability of any third party to any party to this Agreement nor shall any provision give any third party any right of subrogation or action over or against any party to this Agreement.
- 17.6 Waiver. Failure of either party to complain of any action, non-action or default of the other party shall not constitute a waiver of such party's rights hereunder with respect to such action, non-action or default. Waiver by the YMCA or City of any right or any default hereunder shall not constitute a waiver of any subsequent default of the same obligation or for any other default, past, present or future. No payment by a party, or acceptance by the other party, of a lesser amount than shall be due from one party to the

other shall be treated otherwise than as a payment on account. The acceptance by a party of a check for a lesser amount, with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and a party may accept such check without prejudice to any rights or remedies which it may have against the other party.

- 17.7 Construction. This Agreement has been negotiated by the parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and without strict construction in favor of or against any party.
- 17.8 No Assignment. This Agreement, nor any part of it nor any right or obligation arising from it shall be assigned without the express written consent of the parties.
- 17.9 Independent Contractor Status. The parties shall at all times be acting as independent contractors. This Agreement is not intended, and shall not be construed to create the relationship of agent, servant, employee, partner, joint venture or association as between the parties. The parties understand and agree that any of their personnel furnishing services to the CRC under this Agreement are employees solely of the party which hired such personnel for purposes of workers' compensation liability and for purposes of receiving all other types of employee benefits. The parties shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any personnel hired by them for injuries arising from or connected with services performed under this Agreement, and shall bear the sole responsibility and liability for furnishing all other employee benefits to any personnel hired by them.

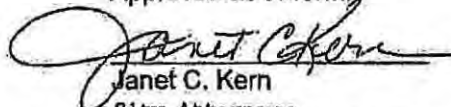
IN WITNESS WHEREOF, the YMCA and the City have executed this Agreement as of the day and year first above written.

YMCA

By: 
Name: DAVID G. THORNTON
Title: PRESIDENT & CEO

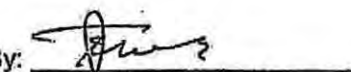
CITY OF MORGAN HILL

Approved as to form:


Janet C. Kern

City Attorney:

C:\Documents And Settings\Burl\Local Settings\Temporary Internet Files\OLK11\YMCA-Morgan Hill CRC Agreement 4-28-06 - Execution Doc

By: 
J. Edward Tewes, City Manager

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EXHIBIT A

CENTENNIAL RECREATION CENTER OPERATING PLAN May 2006

1. Community Recreation Center Management.

- a. The City of Morgan Hill and the YMCA of Santa Clara Valley through the Mt. Madonna Branch will work together in the spirit of partnership to provide health and fitness and senior services to members and participants of the new Centennial Recreation Center. The YMCA will offer an agreed-upon range of programming and will involve the City in hiring, supervising and evaluating all staff that deliver these programs.

b. Personnel

It is recognized that all staff who work at the CRC are members of multiple work teams and are members of one CRC staff team. When staff are working they will be expected to work together as one, high performing team focusing on customer service, safety, communication, and cooperation.

All CRC staff will attend appropriate staff meetings as determined by the CRC Supervisor and Associate Supervisor. YMCA staff will be expected to attend selected YMCA trainings and staff meetings of the branch or Association. City staff will be expected to attend selected City trainings and meetings. When appropriate, CRC staff will have access to selected YMCA and City trainings.

To ensure a team environment, CRC staff will have many items in common:

- Identical staff uniforms with the partnership logo on the uniform and the organizational logo on staff name tags.
- Joint staff meetings.
- Identical payroll periods.
- Identical safety and risk management policies.
- Expectation to work as a team and support all other departments of the CRC.
- Responsibility to identify problems and provide solutions for the entire center.

The CRC Supervisor will be hired by the City and will be responsible for providing leadership for all CRC team members in an effort to deliver a large volume of high quality programs. The team will be comprised of three major departments:

- City staff hired by the CRC Supervisor.
- City staff hired by the Aquatics Supervisor.
- YMCA staff hired by the YMCA.

Success of the CRC Supervisor will be measured by:

- Creating one high performing CRC staff team from City CRC, YMCA CRC, and Aquatics Department CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center
- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

The CRC will have a Municipal Services Assistant who will provide support to supervisors, coordinators, and program directors.

The Associate CRC Supervisor for Health and Fitness will be hired by the YMCA and will supervise the Welcome Center Program Director, the Health and Fitness Program Director, and will be responsible for membership sales and all land based staff and fitness programming. Water based fitness classes will be supervised by the Aquatics Supervisor.

The Welcome Center Program Director is responsible for marketing the membership of the facility. This position will supervise the sales and service staff who work the Welcome Center. They will assure that people can join the facility at any time the facility is open, and will be responsible for all enrollment for any program at the facility. In addition it is hoped that the Welcome Center can also take enrollment for programs at other city facilities and the YMCA.

c. Reporting relationships.

	CRC City Staff	CRC Supervisor	CRC YMCA Staff
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	CRC City Staff	CRC Supervisor	CRC YMCA Staff
Position	Recreation Coordinator (Teens), Recreation Coordinator (Aquatics), Municipal Services Assistant, Maintenance Specialist	CRC Supervisor	Associate CRC Supervisor for Health and Fitness, Wellness Center Director, Senior Program Director
Job Descriptions	City	City with YMCA input	YMCA with City input
Recruiting	City	City with YMCA input	YMCA with City input
Screening	City	City	YMCA of Santa Clara Valley
Decide finalists	City	City with YMCA input	YMCA with City input
Interviews	Regular process, possible YMCA involvement	Regular process with a visit to a YMCA and a near final interview with City and YMCA staff together	Regular process with City involvement
Decision	City	City decision with YMCA input	YMCA decision with City input
Reports to	CRC Supervisor	Recreation and Community Services Director	Mt Madonna YMCA Branch Executive
Employee Progressive Discipline	City with possible YMCA input	City with possible YMCA input	YMCA with possible City input
Performance Evaluation	CRC Supervisor with input from YMCA	Recreation and Community Services Director with input from YMCA	YMCA with input from CRC supervisor

d. Staff liaison:

The Mt. Madonna YMCA will provide a liaison to the CRC to:

- Meet weekly with CRC Supervisor to coordinate YMCA programming and services with the CRC
- Work with CRC Supervisor and Welcome Center Director on Marketing and enrollment strategies
- Provide supervision to Associate CRC Supervisor for Health and Fitness and Seniors Program Director to assure program quality and maximum enrollment

- Interface with the Santa Clara County Department of Aging
- Resolve any YMCA staff performance problems

- e. Capital expenditures.
Beginning in FY 07/08, the parties will develop a plan for future facility replacements. The replacement schedule will be developed during the budget process and funded as an annual operating expense for the CRC. The City will include the YMCA in the planning process, but will retain final decision-making authority on the facility replacement plan.

- f. **Facility maintenance.**
The CRC Supervisor will be responsible for managing facility maintenance in cooperation with the Building Division of the Community Development Department. The YMCA will be responsible for fitness equipment upkeep and maintenance. At all times, the CRC and its equipment will be maintained in a safe, clean, and operational manner. All CRC staff will be responsible to assist in keeping the facility clean as part of their daily duties. City staff and/or contractual crews will perform detailed, daily cleaning. A daily, monthly, quarterly, and annual cleaning plan will be developed to ensure the long-term integrity of the CRC.
- g. **Cash Handling/Accounting/Payables/Receivables/Collections.**
The CRC Supervisor will be responsible to ensure all cash handling, accounting, payables, receivables, and collections policies are adhered to by CRC staff. The City and YMCA will cooperatively determine which party can most effectively and efficiently perform these duties as part of the partnership. Detailed policies and procedures will be developed for all financial aspects of the CRC operations.
- h. **Membership policies.**
The City and YMCA will cooperatively develop membership policies that are intended to ensure community access, maximize revenue and comply with legal mandates. Existing YMCA policies may be modified to meet the CRC's operational needs. Both parties understand and agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation or ancestry.
- i. **Membership software.**
The City and YMCA will cooperatively determine which software package best meets the CRC's membership sales, tracking, and management needs. All appropriate CRC team members will be thoroughly trained to ensure that accurate and timely processing of information is achieved.
- j. **Operating hours: Estimated Days and Hours of Operation.**
The CRC will be open seven days per week except on major holidays; Easter, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas. The facility will be open according to the following daily schedule:

Monday through Friday	5am to 10pm
Saturday	6:30am to 8pm
Sunday	8am to 6pm

The City and YMCA may determine that it is in the best interest of the partnership and CRC members to adjust the operating schedule.

- k. Customer surveys and complaint resolution.
Customer surveys will be available at the Welcome Center at all times. The CRC Supervisor and Welcome Center Director will be responsible to track comments, provide recommendations for service improvements, and to ensure all complaints are handled in a professional and timely manner.
- l. Fundraising and scholarships.
The YMCA will raise funds as part of its Community Support Campaign to help support the senior nutrition program and to offer additional programs for teens involved in the CRC (Youth & Government, teen leadership or camp scholarships).

2. Programming and pricing.

a. Pricing Policy

- Member fees will be set to provide access to the health and fitness facility and maximize revenue
- The resident rate will apply to those who work or live in Morgan Hill.
- The standard rate will apply to those who do not live or work in Morgan Hill.
- Since membership is the income stream that will provide the best chance of cost recovery, pricing will be done to encourage membership
- Seniors and teens have specialized centers in the facility, and will not need to join in order to take advantage of the programs in these centers. If they wish to use the fitness facilities, they will need to join the CRC or purchase a day pass.

b. Pricing changes

The City Manager will be empowered by the City Council to adjust fees pursuant to Council policy.

- As expenses increase, prices will be adjusted to meet full cost recovery goals
- It is best to increase fees on an annual basis a small amount rather than have a larger amount after a longer time period of no fee increase
- Fee increases would be determined annually by taking into account 3 major items:
 - (1) Salary Increases
 - (2) Energy Costs
 - (3) CPI
- If it is determined that the current pricing structure relating to the daily fee is undermining the cost recovery goal, the City Council will make a decision to revise the fee or the goal.

c. Main Membership Categories

- Adult: Includes one adult and all children under the age of 18 living at the same address. Access all hours, all core programs, and Fitlinxx
- Family: Two adults and all children under the age of 18 living at the same address. Access all hours, all core programs and Fitlinxx
- Special Hours: One adult, designed for seniors and those with flexible schedules. 10:00 am to 4 pm weekdays, and any time on the weekends, access all core programs and Fitlinxx during these hours
- Adult Plus: Addition of extra adult over the age of 18 living at the same address, access all hours, all core programs and Fitlinxx
- Day Pass: Access for one person to open gym, open swim, fitness room
- YMCA membership: Those members who want access to other YMCA facilities or programs, will be offered the opportunity to select this when they join or at any time in the future. The City will pay the YMCA 50% of the processing fee for each membership that selects this option.

Categories may be adjusted, deleted or new categories added by agreement of both parties.

d. Program Pricing Structure.

Type	Member/ resident	Member/standard	Non/member /Resident	Non/member /standard
Membership processing fee	\$50 for Adult \$75 for Family	\$50 for Adult \$75 for Family		
Membership	Fee	Fee +	n/a	n/a
YMCA membership	Free	Free	Fee	Fee
Core class	Free	Free	Fee	Fee + \$10
Specialty Class	Member fee	Member Fee + \$10	Non-member fee	Non-member fee + \$10
Swim lessons	Member fee	Member fee + \$10	Non-member fee	Non-member fee + \$10
Fitlinxx	Free	Free	n/a	n/a
Day Pass adult	Free	Free	\$7	\$9

- Core Fitness classes and FitInxx are free for members. Examples:
 - Aerobics
 - Water Fitness
 - Group cycling class
 - 12 week personal fitness program
- Day pass participants can use the gym, the fitness center, and lap or recreational swim. Day pass participants are not eligible to take part in a fitness class except as a one time guest
- Non members who want to take a class would buy a class card good for one month from the date of the first use. These punch cards will have up to 8 punches. This will give them access to the class, but not to other areas of the facility.
- Some Specialty Classes will have an additional cost for everyone. Examples:
 - Strength Training
 - Personal Training
 - Swim lessons

3. Governance.

By June 30, 2007, CITY and YMCA will evaluate the feasibility of establishing a CRC advisory committee. Such a committee could be comprised of teen center, senior center, and health and fitness users as well as Mt. Madonna YMCA board members or advisors as determined appropriate by the CITY and YMCA. If such an advisory committee were determined to be feasible, CITY and YMCA would establish a mission for the committee and plan for supporting its activities.

4. Partnership Evaluation.

As described in Section 2.3 of the Operating Agreement, the parties will conduct an evaluation of the success of the partnership prior to extending the term of Agreement. This evaluation will be presented to the City of Morgan Hill City Council and the YMCA of Santa Clara Valley Metropolitan Board of Directors and Mt. Madonna YMCA board of Directors, as appropriate.

The parties will work together on the development of this evaluation, agreeing to the criteria to be used in the evaluation. The criteria may include:

- Extent to which a high performing CRC staff team has been developed from City CRC, YMCA CRC, and Aquatics Division CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center

- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning.
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

5. Advertising and marketing of facility and programming.

- a. The partnership of the City and YMCA will be prominently displayed on the facility, staff uniforms, and written materials. Both the City and YMCA agree that any differentiation of the two parties for branding purposes is not intended to separate the staff during the operation of the facility, but to take advantage of the brand name of the YMCA and City for marketing purposes. The parties will create a logo to identify and celebrate the partnership.
- b. The CRC Supervisor is responsible for developing a marketing plan in coordination with the YMCA
- c. The parties intend to advertise CRC programming in both City and YMCA publications/resources
- d. Staff nametags may identify special departments of the facility.
- e. Printed materials will say "Centennial Recreational Center, operated in Partnership with the YMCA."
- f. City is willing to have YMCA staff provide information regarding other YMCA programming that would be available to CRC members as part of their membership.
- g. The partnership will be identified with signage inside the building. Printed materials with the YMCA logo and other identifying information may be used at the facility.

6. Senior Services Provided at the CRC.

The YMCA will provide senior services, programs and activities at the CRC, in conjunction with other senior service organizations, according to the following guidelines:

- a. Senior services will be offered a minimum of six hours each weekday throughout the year.
- b. The YMCA will collaborate with and coordinate the activities of senior service providers, such as the Community Action Group, AARP, and the Friends of the Morgan Hill Senior Center to ensure a range of service,

support and enrichment opportunities to seniors at the CRC. Typical programs may include, but will not be limited to: nutrition, health insurance counseling, legal assistance, health screenings, income tax preparation assistance, educational presentations, recreational activities, arts and crafts classes, counseling services, and opportunities for volunteer service. The parties acknowledge and agree that the CRC is a public facility and as such there are certain legal restrictions upon facility use.

- c. The YMCA will operate a daily nutrition program, serving an average of 75 meals per weekday to 350 unduplicated seniors annually.
 - d. The YMCA will offer opportunities for other social service agencies to provide health maintenance, education, and advocacy programs in a location convenient to seniors.
 - e. The YMCA will provide activities and services each month that focus on developing and strengthening individual seniors in spirit, mind and body.
 - f. The YMCA will provide a minimum of one special event per month to maintain interest and enthusiasm.
7. It is understood between the parties that this COP may be amended from time to time by the mutual agreement of the parties to reflect operating experience.

Centennial Recreation Center Operating Budget Framework

EXHIBIT B

Centennial Recreation Center					
	City Aquatics	City CRC Administration, Operations, and Programs	Seniors	YMCA Health/Fitness	CRC Total
EXPENSE	XXX,XXX	XXX,XXX	XX,XXX	XXX,XXX	X,XXX,XXX
REVENUE	YYY,YYY	YY,YYY	-	YY,YYY	Y,YYY,YYY
TRANSFER IN					XX,XXX
OPERATING GAIN/ (LOSS)					
COST RECOVERY	%	%	%	%	%

Seniors:
Senior expense historically budgeted in Recreation Administration budget.

CRC Annual Budget:
Partnership goal to achieve 100% cost recovery by FY 08/09 based on 2006 City and YMCA Market Study.

Aquatics:
Second largest revenue source.
100% City responsibility.

CRC Administration and Operations:
Non-fee based activity expenses (City staff, utilities, supplies, Teen Center, etc.) will be paid from here.
100% City responsibility.

Partnership Reconciliation:
This column will be the agreed upon partnership portion of the budget.

Operating gains or losses will be determined annually from this number.

On an annual basis, membership revenues should significantly exceed expenses to assist in full cost recovery for the CRC.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

RECOMMENDATION(S)

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

Staff recommends that the City Council approve the purchase and implementation of an upgraded document management system from ECS. Integrated document management systems are a standard business tool for local government organizations which allow all departments within the City to coordinate work flow and business processes, share information, store data and records in conjunction with the City's records retention schedule, provide public access to records that are public, and facilitate customer service. While most cities in the region and throughout the state currently utilize such systems, Morgan Hill relies upon a mixture of non-integrated paper tracking systems and software systems that are often duplicative and very time intensive to carry out the City's many business processes.

Currently every day, information is used, moved, and archived in a very manual process which includes searching, copying, and routing. The process is tedious and very time-consuming, and the inefficiencies of this process divert staff from the crucial business of acting on this information. Now more than ever, it is critical that we update our processes to maximize our resources and staff time. With the current hiring freeze and reduction in contract staff, streamlining our business processes will support maintaining customers service levels. Staff is recommending moving forward with this software acquisition ahead of the budget adoption in order to 1) utilize this time when many of our facilities are closed due to the shelter-in-place orders to implement the variety of workflows and improve business processes and 2) in anticipation of re-opening many facilities, to have these processes in place as many of our current business processes may no longer be viable in our new normal.

The City currently uses a legacy Laserfiche product called Laserfiche United which is limited to retention of records. The software used is over 14 years old and does not provide business process automation, electronic forms management, or public access. The proposed document management system provides integrated and automatic workflows across departments throughout the City, integration with many software systems already in use by the City, unlimited electronic forms for use both internally and for the public, access through a public facing portal to records that are deemed public records, integrated document management in conjunction with the City's records retention schedule, and increased accuracy with automated OCR (Optical Character Recognition) and indexing of records.

The document management software is intended to provide significant process efficiencies throughout the organization. Below are some processes that will be improved and where teams will save time:

- Contract routing
- Special event permits
- Teammate onboarding
- Budget development
- Accounts payable
- Accounts receivable
- Utility services application
- Credit card statement review
- Travel reimbursement requests
- Ethics and sexual harassment prevention training
- Vendor registration
- Public record requests
- Records management
- Development process inquiries
- Field or recreation facilities use/applications
- Recreation Facility Membership and Program Registration Forms Management

The business processes above will be improved through the use of automated workflows that enable automated document routing that saves time and money by reducing the time it takes to photocopy, the time it takes to hand deliver and any lag time, and the manual process of recording the end product. We will develop a rules-based routing system to streamline document handling procedures, automatically notify teammates when documents require them to take action, track every step of the process, and monitor the process to ensure efficiency and that we are meeting deadlines. We will also use a combination of custom and existing tested workflows and forms available in the Laserfiche library. As new forms and workflows are created by different organizations, they are uploaded to the Laserfiche Library for all clients to use. We would also be able to take an existing workflow and customize it to our needs. The ability to use these existing tools will offer significant time savings in developing the workflows for all of the City's various business processes. Efficiency will also be added through our ability to have increased communication and collaboration as the product can be accessed remotely, online, or on mobile devices. This will allow for uninterrupted

workflows as teammates can access the system from anywhere.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation by staff for the City Council to authorize the purchase and implementation of a document management system.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve purchase of the document management system. Staff would continue to utilize the existing processes and evaluate other areas where staff time savings and efficiencies could be gained.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

Total funding necessary to purchase the document management system would be \$80,987, which includes the first year's annual maintenance cost of \$14,515. The annual maintenance cost of \$14,515 would mean an increase in the on-going annual expense of \$8,815, as compared to the current annual maintenance cost of \$5,700. The system would be funded by the Information Technology Fund (730), which has sufficient fund balance and budgetary appropriations to accommodate this purchase in the current fiscal year.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Quote Upgrade to Avante



ECS IMAGING, INC.
YOUR WORLD CLASS LASERFICHE PROVIDER

ECS Imaging, Inc.
5905 Brockton Ave. Suite
C
Riverside CA, 92506

Phone: 951-787-8768
Fax: 951-787-0831
www.ecsimaging.com

Quote

Q4 2019 V1

Quote Type **Avante**

Quotation For

Name: Michelle Bigelow
Company: City of Morgan Hill
Phone:
E-mail:

Quote Info

Date: 11/20/2019 rev 5/15/2020
Quote Number: 112019
Valid Through: 1/30/2020 7/30/2020
Terms: net 15
Account Manager: pete H
Phone:
E-mail:

Description of Product and Services

Upgrade existing Laserfiche Legacy version (United) to Laserfiche Avante 10.4

Software

Avante includes Workflow and Forms Essentials

SKU	Description	Unit Price	Quantity	Line Total
MSE30	Laserfiche Avante Server for MS SQL with Workflow	\$ 5,000.00	1	\$ 5,000.00
MNF16	Laserfiche Named Full User w/Web Access, Snapshot, and Email	\$ 600.00	45	\$ 27,000.00
MFRM16	Laserfiche Forms Professional	\$ 50.00	45	\$ 2,250.00
MPFRM	Laserfiche Forms Portal Add-on	\$ 7,995.00	1	\$ 7,995.00
MPP5	Laserfiche Standard Public Portal (25 retrieval user licenses)	\$ 25,000.00	1	\$ 25,000.00
MCQ01	Laserfiche Quick Fields	\$ 595.00	1	\$ 595.00
MCQC5	Laserfiche Quick Fields Real Time Look Up and Validation Package	\$ 595.00	1	\$ 595.00
MCNC16	Laserfiche Connector	\$ 25.00	45	\$ 1,125.00
MDCSI	Laserfiche Integration with DocuSign	\$ -	1	\$ -
MCA01	Laserfiche Import Agent	\$ 1,495.00	1	\$ 1,495.00

Trade-in Credit \$ (17,183.00)

Software Subtotal \$ 53,872.00

Annual Maintenance and Licensing

SKU	Description	Unit Price	Quantity	Line Total
MSE30B	Laserfiche Avante Server for MS SQL with Workflow LSAP	\$ 1,000.00	1	\$ 1,000.00
MNF16B	Laserfiche Named Full User w/Web Access, Snapshot, & Email LSAP	\$ 120.00	45	\$ 5,400.00
MFRM16B	Laserfiche Forms Professional LSAP	\$ 10.00	45	\$ 450.00
MPFRMB	Laserfiche Forms Portal Add-on LSAP	\$ 1,600.00	1	\$ 1,600.00
MPP5B	Laserfiche Standard Public Portal (25 retrieval user licenses) LSAP	\$ 5,000.00	1	\$ 5,000.00
MCQ01B	Laserfiche Quick Fields LSAP	\$ 120.00	1	\$ 120.00
MCQC5B	Laserfiche Real Time Look Up and Validation Package LSAP	\$ 120.00	1	\$ 120.00
MCNC16B	Laserfiche Connector LSAP	\$ 5.00	45	\$ 225.00
MDCSIB	Laserfiche Integration with DocuSign	\$ 300.00	1	\$ 300.00
MCA01B	Laserfiche Import Agent LSAP	\$ 300.00	1	\$ 300.00

Annual Maintenance Subtotal \$ 14,515.00

Hardware

SKU	Description	Unit Price	Quantity	Line Total
Hardware Subtotal \$ -				

Professional Services

SKU	Description	Rate	Quantity	Line Total
ECSCI	ECS Consulting Services	\$ 1,800.00	1.00	\$ 1,800.00
ECSCI	ECS Installation Services	\$ 1,800.00	1.00	\$ 1,800.00
ECSCI	ECS Configuration Services	\$ 1,800.00	4.00	\$ 7,200.00
ECST	ECS Training Services	\$ 1,800.00	1.00	\$ 1,800.00

Professional Services Subtotal \$ 12,600.00

Special Terms

Install software above, configure 1 simple forms & workflow to be used as "train the trainer" for system administrator . User Training: search, scan/index, submit forms, approve within workflows. Additional forms & workflows will be under a separate proposal

Subtotal \$ 80,987.00

Tax Rate Software Only (Download Only)

0.000%

Tax \$ -

Software is only available via download and is not subject to CA sales tax

Shipping \$ -

Total \$ 80,987.00

Billing Terms:

All Software and Annual Maintenance is billed 100% at project start. Services are billed 50% up front minimally with remaining Services as incurred.

Annual Priority Support Contract Includes:

- o Maximum 4 Hour Response Time - Upgraded from 24 hours with traditional LSAP support
- o Live Hours of support are 7:30am - 5:00pm PST M-F
- o Unlimited Phone and E-mail Support
- o On-site time is calculated to the nearest half hour and minimum onsite calculation is between 2-8 hours depending on the location
- o On-site time can be used for remedial training, installing updates, and consulting, in addition to support
- o ECS may allow planned after hours support in rare circumstances. In these circumstances Priority Support will be billed at double the hourly rate.

Hardware Return Policy:

Unopened boxed hardware may be exchanged for a full cash or credit refund within 7 days - a 15% restocking fee may apply. Defective hardware will be exchanged for a replacement per the terms and conditions specified on the product warranty card.

- o Two free admissions to the ECS Annual Customer Conference along with Free Admission to Quarterly User Groups
- o Monthly E-Newsletter
- o On-site/remote support hours included as quoted. On-site within next business day as needed. Additional hours of support purchased at a discounted hourly rate. Customers not under this plan can purchase on-site hours at \$250/hour with a 1 hour minimum for remote support, and an 8 hour minimum onsite charge in addition to travel expenses.

S30 LF Server	6600	1	\$6,600.00
Ful User License	566.66	6	\$3,399.96
read only user	220	25	\$5,500.00
Snapshot	100	6	\$ 600.00
Quick Fields base	491.66	1	\$ 491.66
Quick Fields Real time LI	591.66	1	\$ 591.66

\$17,183

Attachment: Quote Upgrade to Avante [Revision 1] (2737 : Purchase and Implementation of Laserfiche)

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, May 6, 2020 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Angie 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 Angie Gonzalez declared the posting of the agenda.

CITY MANAGER'S REPORT

City Manager Christina Turner provided an update regarding the mail theft that we are experiencing in

Minutes Acceptance: Minutes of May 6, 2020 7:00 PM (CONSENT CALENDAR)

Morgan Hill. The first wave of paper stimulus checks began entering the mail on April 22nd, the region saw an increase in mail theft after that. Our Police Department has increased patrols to address this up-tick in crime. The City also sent out a Facebook post alerting the community of the mail theft and precautions they can take including getting mail daily and signing up for informed delivery so that people know what they have coming in their daily mail. US Postal Inspection Services (USPIS) asked that residents help protect themselves from mail theft by picking up their mail every day. The vast majority of mail theft happens overnight. Our police department has conducted surveillance which led to a possible suspect who fled in a vehicle. Detectives are investigating this incident. Our officers are sharing information with the postal investigators who investigate mail theft. Additionally, victims of postal related crimes can file a complaint with USPIS by visiting their website www.uspis.gov <<http://www.uspis.gov>>. When USPIS receives a report of a community mailbox burglary, letter carriers will generally deliver a flyer to all affected victims with contact information, guidance on how to be vigilant, of financial fraud that may have resulted, and tips to help prevent becoming a victim of mail theft in the future. United States Postal Inspection Services assists the postal service in the development and deployment of counter measures to deter mail theft when appropriate.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that High Speed Rail's (HSR) draft Environmental Impact Report (EIR) for the San Jose to Merced subsection is out and available for review. It is a little difficult to find as it is not sitting in plain sight. If you go to their website: hsr.ca.gov <<https://hsr.ca.gov>> on the home page there is a link that says San Jose to Merced Environmental Documents, if you click on that link and scroll towards the bottom you will see a few links there. One says copies of the draft EIR/EIS, that is not the link. If you want to see the actual report, keep scrolling and there is a link called Report with a plus sign and if you click on that plus sign it gives you all the links to the various sections of the report that are on line. There are some technical documents that are too large to be posted online and if you want copies of those you will have to contact HSR.

He stated that the State of California has launched a new website active today, it is [COVID19.ca.gov](https://covid19.ca.gov) <<https://covid19.ca.gov>>. It is a lot more comprehensive than the prior one they had. For people looking to get more information about the State's Shelter in Place orders or testing or other resources this site is much better.

PUBLIC COMMENT

Mayor Constantine opened the public comment at 7:06 p.m.

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

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

PUBLIC COMMENT SUPPLEMENT 4

ADOPTION OF AGENDA

MOTION:

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 3, 5 and 6.

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

1. APPROVE AGREEMENT WITH VALLEY TRANSPORTATION AUTHORITY FOR MEASURE B EDUCATION AND ENCOURAGEMENT PROGRAM FUNDING

Recommendation:

Approve and authorize the City Manager to execute and administer a contract with Valley Transportation Authority to receive funding for Measure B Education and Encouragement Programming.

2. APPROVE UTILITY SYSTEM RADIO PURCHASE FROM MOTOROLA

Recommendation:

1. Approve the sole source purchase of radios for the Utilities Division from Motorola for \$142,267; and
2. Authorize the City Manager to approve the purchase order.

3. ADOPT RESOLUTION APPROVING REVISIONS TO CITY COUNCIL POLICY CP-94-04, THE CITY'S INVESTMENT POLICY

Recommendation:

Adopt resolution approving revisions to City Council Policy CP-94-04, the City's Investment Policy.

4. ITEM PULLED FOR DISCUSSION

5. APPROVE THE APRIL 15, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE APRIL 22, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM MOVED FOR DISCUSSION

4. CERTIFICATION OF MARCH 2020 ELECTION RESULTS

Recommendation:

Adopt resolution reciting the facts of the Special Municipal Election of March 3, 2020 and declaring the results of such other matters as provided by law.

Mayor Constantine opened the public comment at 7:08 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:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

PUBLIC HEARING

7. INITIATE ANNUAL ASSESSMENT PROCESS FOR LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

Adopt resolutions approving the following actions:

1. Initiate the proceedings for the levy of assessments for Fiscal Year 2020-21;
2. Approve the Engineer's Annual Report and the proposed assessment levy; and
3. Declare the City Council's intention to levy the assessments in the District and to set the Public Hearing date for June 3, 2020.

Public Services Director Chris Ghione presented the report.

Mayor Constantine opened the public comment at 7:16 p.m.
 Hearing no requests to speak, the public comment was closed.

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

OTHER BUSINESS

8. REVIEW THE NEED TO CONTINUE THE LOCAL EMERGENCY DUE TO COVID-19 RESPONSE AND SHELTER-IN-PLACE ORDERS

Recommendation:

Review current conditions and continue the March 13, 2020 emergency proclamation due to pandemic response.

City Attorney Donald Larkin, City Manager Christina Turner, and Economic Development Director Edith Ramirez gave a presentation.

Mayor Constantine opened the public comment at 8:08 p.m.
 Hearing no requests to speak, the public comment was closed.

Council Member Carr asked staff to come back in two weeks with how we are preparing for re-opening.

RESULT: ACCEPT REPORT

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Carr asked what is the next step regarding COVID-19 and assisting businesses re-open.

Council Member Martinez Beltran asked that we look into easing TOT taxes with hotels and having a Community workshop.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 8:56 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk

Minutes Acceptance: Minutes of May 6, 2020 7:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

RECOMMENDATION(S)

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities
Financial Sustainability

REPORT NARRATIVE:

The City's finances have been severely impacted by the global COVID- 19 pandemic and economic crisis. The latest projection shows the estimated revenue loss from the City's major revenue sources of approximately \$17 million over the three fiscal years from the current year FY2019-20 to FY2021-22. These estimates are based on the current information that is available and there remains uncertainty with the economic forecast. Further, we still do not know the long-lasting impacts of COVID-19 or whether full economic recovery will happen when the State of California and Santa Clara County begin to re-open based on the Governor's framework. This situation is not unique to Morgan Hill. Local governments across California and throughout the U.S. are facing similar deficits resulting from the impacts of COVID-19.

The City has already taken actions to reduce costs while trying to minimize the effects on the level of public services. To date, the City has implemented:

- ☐ Hiring freeze, except public safety
- ☐ Stricter expenditure controls
- ☐ Furlough of temporary and permanent staff members
- ☐ Limited travel and training
- ☐ Continued evaluation of current contracts and other non-personnel expenditures

During the Virtual City Council Budget Workshop on Friday, May 15, 2020, the Leadership Team presented the proposed budget reductions to align City's expenses with reduced revenue. The Capital Improvement Program component of the Budget Workshop was deferred to the May 20th City Council meeting.

Hale Avenue Extension

During the Council Workshop considerable discussion was had regarding the Hale Avenue Extension. The following background information is being included in this report to help the Council prepare for the continued discussion. City staff continue to recommend the project continue to move forward for several reasons that will be outlined below. Additionally, should the project be delayed or eliminated there will be significant ramifications for the City. Unfortunately, projects of this magnitude take a long time to develop and several decisions must be made along the way to continue to move them forward. The Council does have the option to not move forward with the project, but there will be costs associated with that decision.

The project continues to support congestion improvement by providing an additional north/south arterial roadway on the West side of the City. This was most recently outlined in the 2019 Cut-Through Traffic Study, which reaffirmed the roadway would reduce congestion on Monterey, and not just result in increased cut through traffic. Additionally, the project provides many other benefits and is consistent with the City's Vision Zero policy. It will take cars off the West side residential and collector streets improving safe routes to school for PA Walsh and St. Catherine's schools and will provide a separated Class 1 bike and pedestrian path for the length of the extension.

It is well known that the project has been planned for several decades, but it should be noted that the approval of the project's environmental impact report occurred in 2017 and re-evaluation of the project occurred at that time. Since that time significant investment by the City has been made to acquire all the property necessary for the project. Some of the impacts related to cancelling the project at this point, include:

- Delay could result in the grant funding from Measure B for construction of the project (estimated at \$16.5 million) being lost to the City. There are many projects in line for the Countywide funding, including large expressway projects that could take 5 years of funding individually. Delay on the project could result in the City being unable to get the funding back for years if ever. The City staff and elected officials have worked very hard to get this project to the top of the list for funding in a very competitive program area.
- The land acquisition for the project was funded through traffic impact fees collected for this purpose for many years. If the project does not go forward those funds would likely need to be refunded to developers with a total cost of approximately \$8 million or at minimum paid back to the fund from another funding source (likely the General Fund).

- The County of Santa Clara transferred land to the City of Morgan Hill for the specific purpose of constructing the roadway. The County purchased the property with County Road Funds and if the City does not use the property for the roadway, the City will need to pay the County back for the properties worth hundreds of thousands of dollars.
- The City has utilized eminent domain on the purchase of one section of property for the roadway. This was intentional to have the project shovel ready to be first in line for the very competitive Countywide funding. Additionally, the Water District's flood control project has significant need for much of the property taken by eminent domain. Not constructing the roadway could potentially jeopardize this acquisition and jeopardize that project as well.
- There has been discussion that the land be reserved for open space or park space. This property is not included in the City's current Parks Master Plan for this purpose, nor would the City staff recommend this property be taken on for this purpose as there would not be adequate funds to pay for the purchase or the ongoing maintenance.

LINKS/ATTACHMENTS:

1. Budget Workshop Presentation
2. Fee Waiver and Funding Organizations Outline
3. Principles to guide sustainable budget strategy
4. Budget Adjustments Schedule



Budget Workshop

Fiscal Year 2020-21 and 2021-22

Biennial Budget



Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Impacts to the Community

- Service level reductions
- Reduced support to community organizations
- Slower response to community requests
- Limited resources for Council initiated programs

Impacts on our Teammates

- Loss of employment for part-time temporary teammates
- Eliminate funding for 8.5 FTE over FY 2019-20 and FY 2020-21
- Loss of contractors working with the City
- Changes in several teammates' job assignments

Agenda

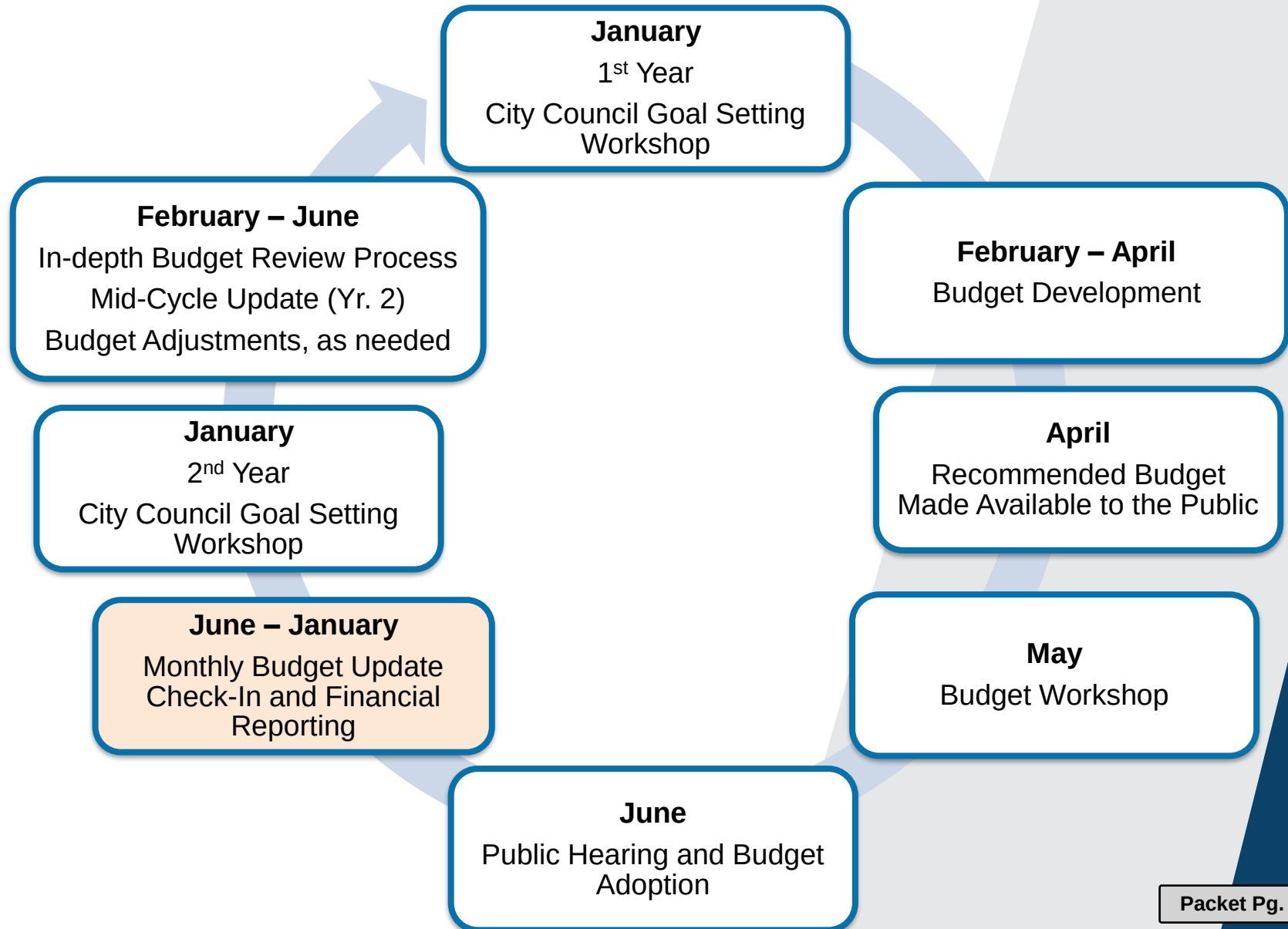
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Time	Topic
9:00 am	Introduction Budget Overview Recommended Budget Proposed Budget Reductions
11:30 am	Capital Improvement Program
12:00 pm	Break
1:00 pm	Engage Morgan Hill Community Advisory Group Input Questions & Answers Public Comment Council Discussion
3:00 pm	Adjourn

Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Biennial Budget Process



Ongoing Budget Updates

- Staff will continue to monitor the budgetary impacts and update City Council and community, coinciding with the Monthly Financials reporting
- **Tentative Upcoming Schedule:**
 - June 17, 2020 – Budget Hearing/Adoption
 - July 15, 2020 – Council Meeting
 - August – Council Recess (schedule if needed)
 - September 16, 2020 – Council Meeting
 - October 21, 2020 – Council Meeting
 - November 18, 2020 – Council Meeting
 - December 16, 2020 – Council Meeting



FISCAL YEARS 2020-2022

RECOMMENDED OPERATING AND CIP BUDGET

morganhill.ca.gov/budget

Major Funds - Discretionary

General Fund

- **Public Safety, Recreation and Community Services, Street and Park Maintenance Services, Economic Development, and Administration**

Major Funds: Non-Discretionary

Development Services Fund

- Provides planning, building and engineering services

Special Revenue Funds

- Housing and Environmental Services

Capital Project Funds

- Funds infrastructure related projects for streets, parks, storm drainage and public facilities

Enterprise Funds

- Provide for Water and Wastewater Utilities' Operations and Infrastructure Improvements

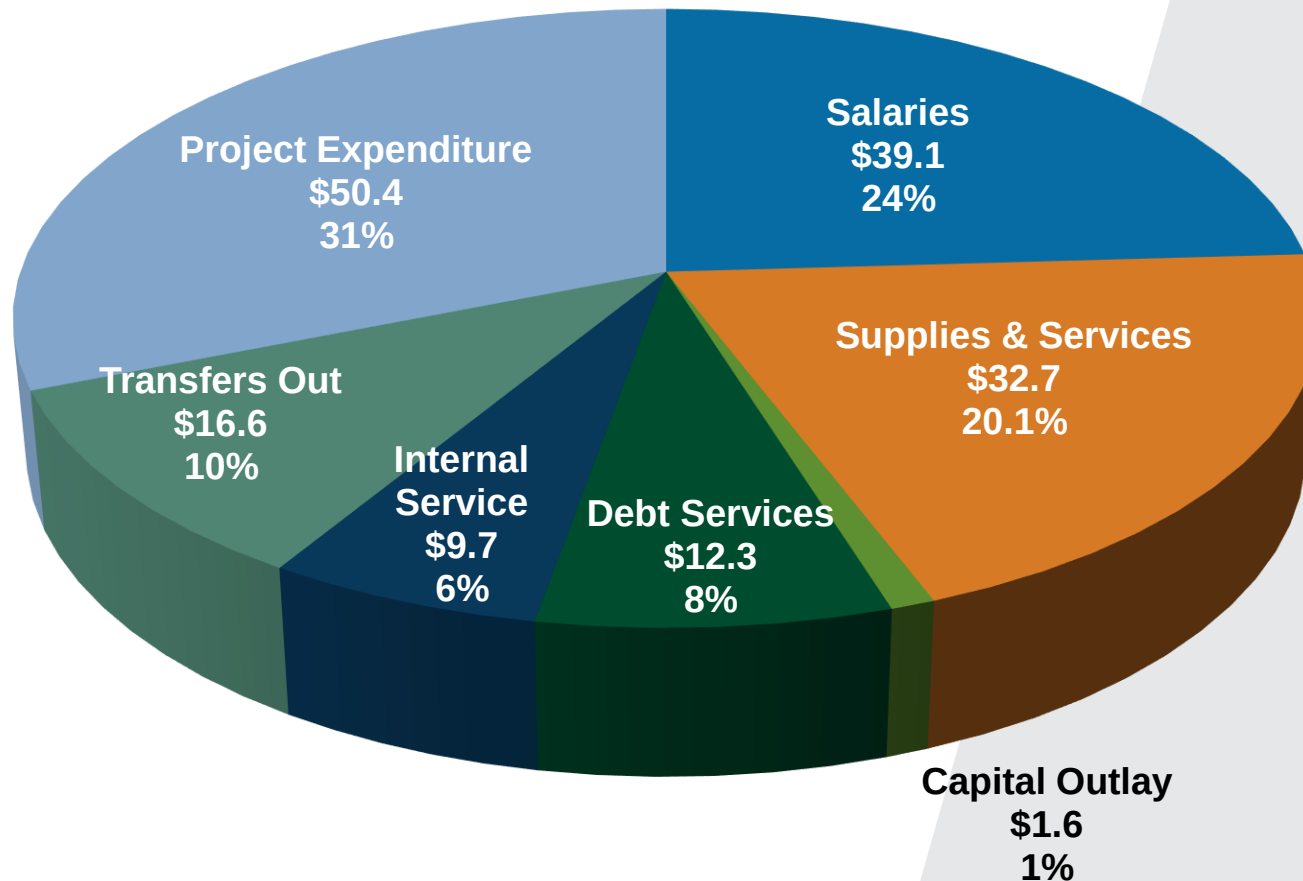
Citywide Recommended Budget Summary (April 22nd)

(In Millions)

	FY 2020-21	FY 2021-22
Operating Budget	\$113.4	\$115.7
Capital Improvement Program	48.9	28.6
Total Recommended Budget	\$162.3	\$144.3

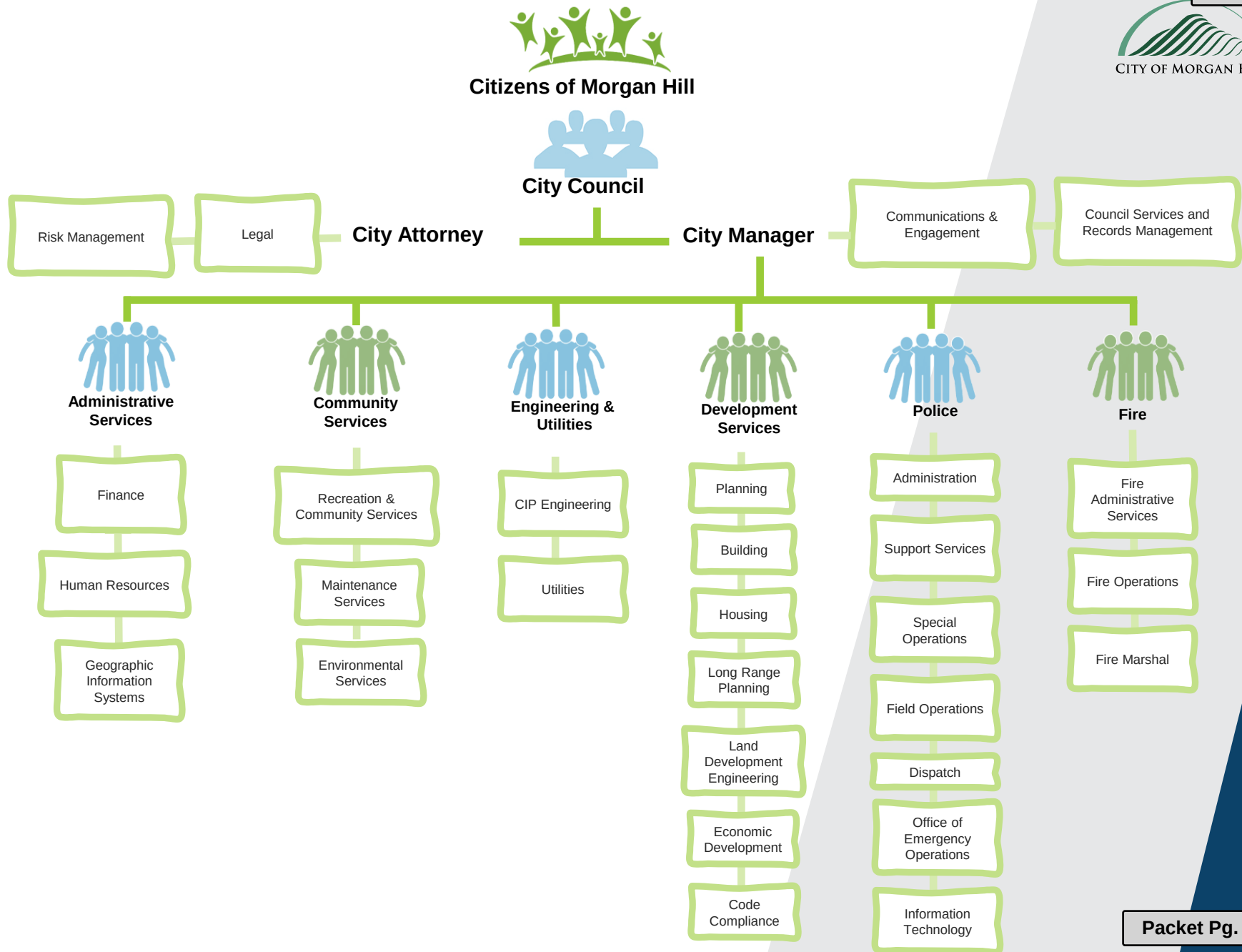
Citywide Expenditures by Category FY 2020-21: \$162.3M

(In Millions)

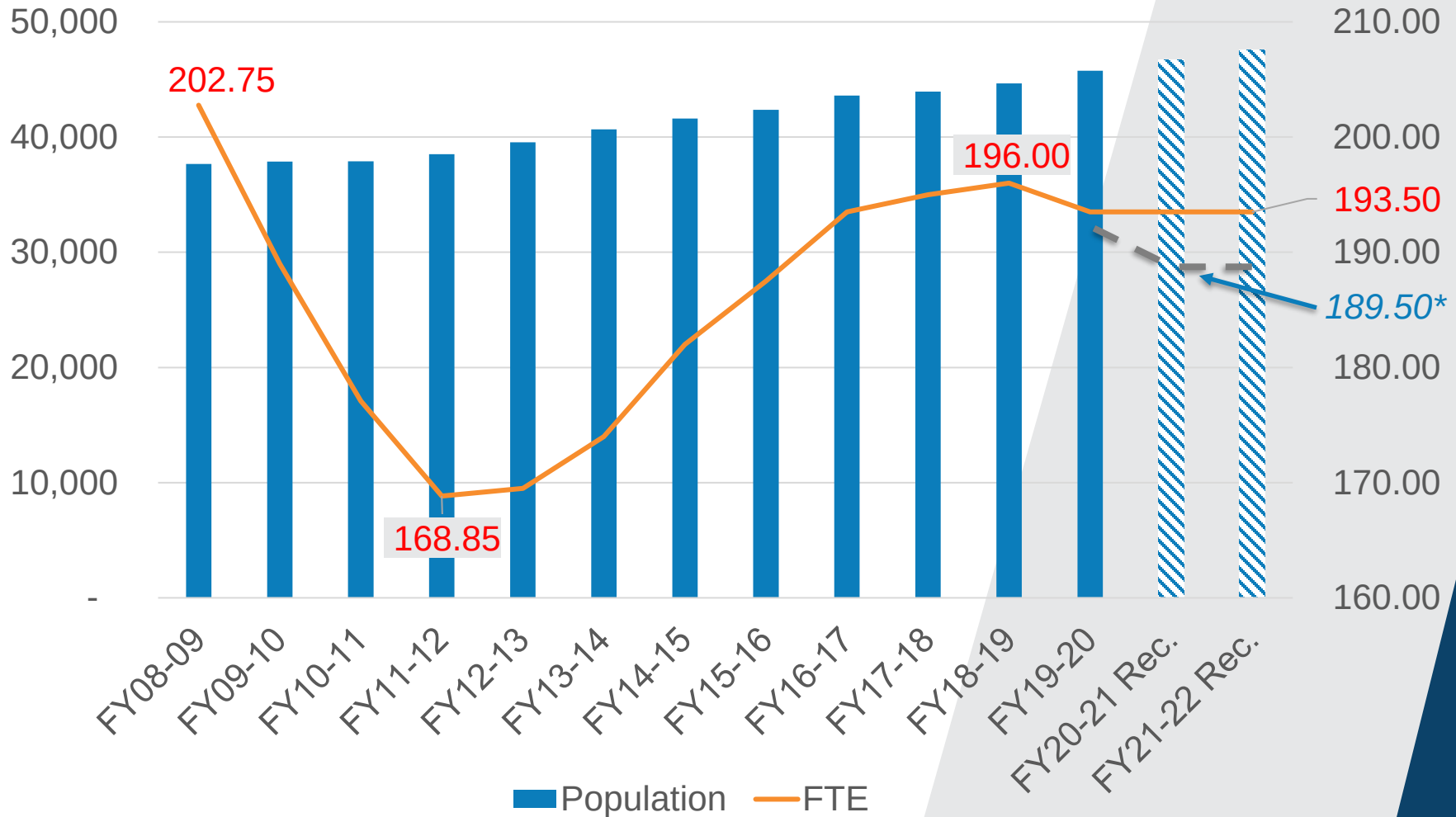


Personnel





History of Funded Full-Time Equivalent (FTE)



* Approved FTE = 193.50, through hiring freeze and attrition, the funding will be maintained for 189.50 FTE

FY2020-21 and FY2021-22 assume 2% population growth (10 yr. avg.)

Personnel Changes

FY2019-20

- 4.5 FTE Eliminated

FY2020-21

- 2 FTE Unfunded through hiring freeze
- 2 FTE Unfunded through attrition (1/2 Year)

General Fund



General Fund Resources by Category FY2020-21: ~~\$46.2~~ **\$43.9** Million

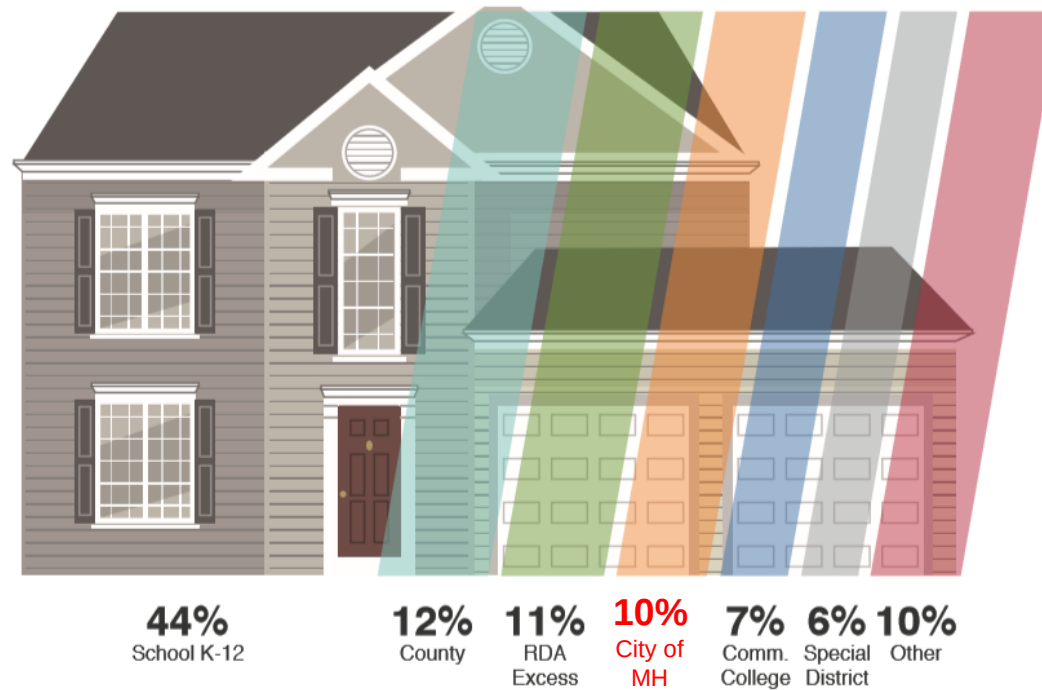
(In Millions)

General Fund Resources Category	(April 22 nd) Recommended	Adjustments	(May 15 th) Recommended	%
Taxes	\$28.2	(\$1.4)	26.8	61%
Current Services	\$9.8	(\$0.7)	9.1	21%
Transfers In	\$2.5	-	\$2.5	6%
Use of Fund Balance	\$3.8	(\$0.2)	\$3.6	9%
Other Agencies	\$0.6	-	\$0.6	1%
Use Of Money & Property	\$0.8	-	\$0.8	2%
Licenses, Permits & Fines	\$0.3	-	\$0.3	1%
Other Revenues	\$0.3	-	\$0.3	1%
TOTAL	\$46.2	(\$2.3)	\$43.9	100%

General Fund – Property Tax

FY 2020-21 = \$13.8M, 34% of GF

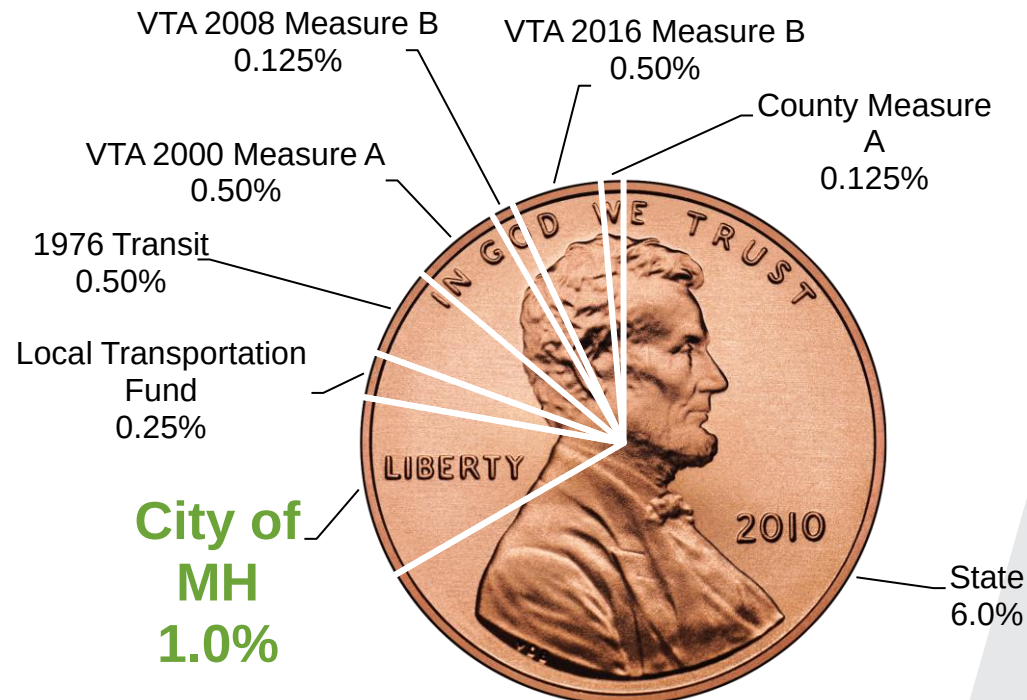
Morgan Hill Property Tax 1% Distribution



General Fund – Sales Tax

FY 2020-21 = ~~\$8.6~~ **\$8.0M**, 20% of GF

Allocation of Sales Tax Rate (Current Sales Tax Rate 9.0%)



General Fund – Recreation Services

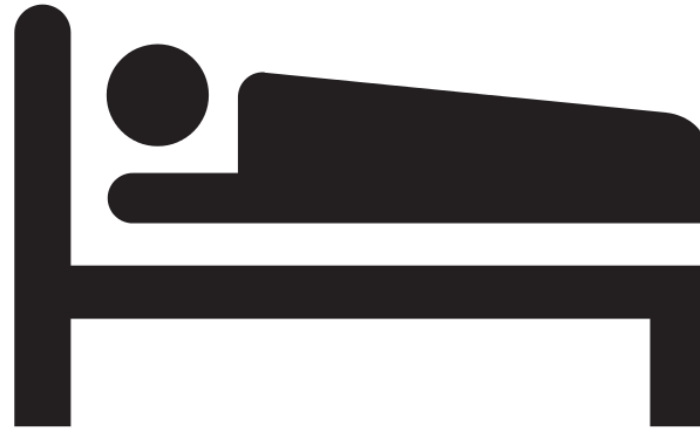
FY 2020-21 = ~~\$7.0~~ **\$6.3M**, 16% of GF

- Recreation
 - Facility Rental Fees
 - Recreation Membership Fees
 - Classes



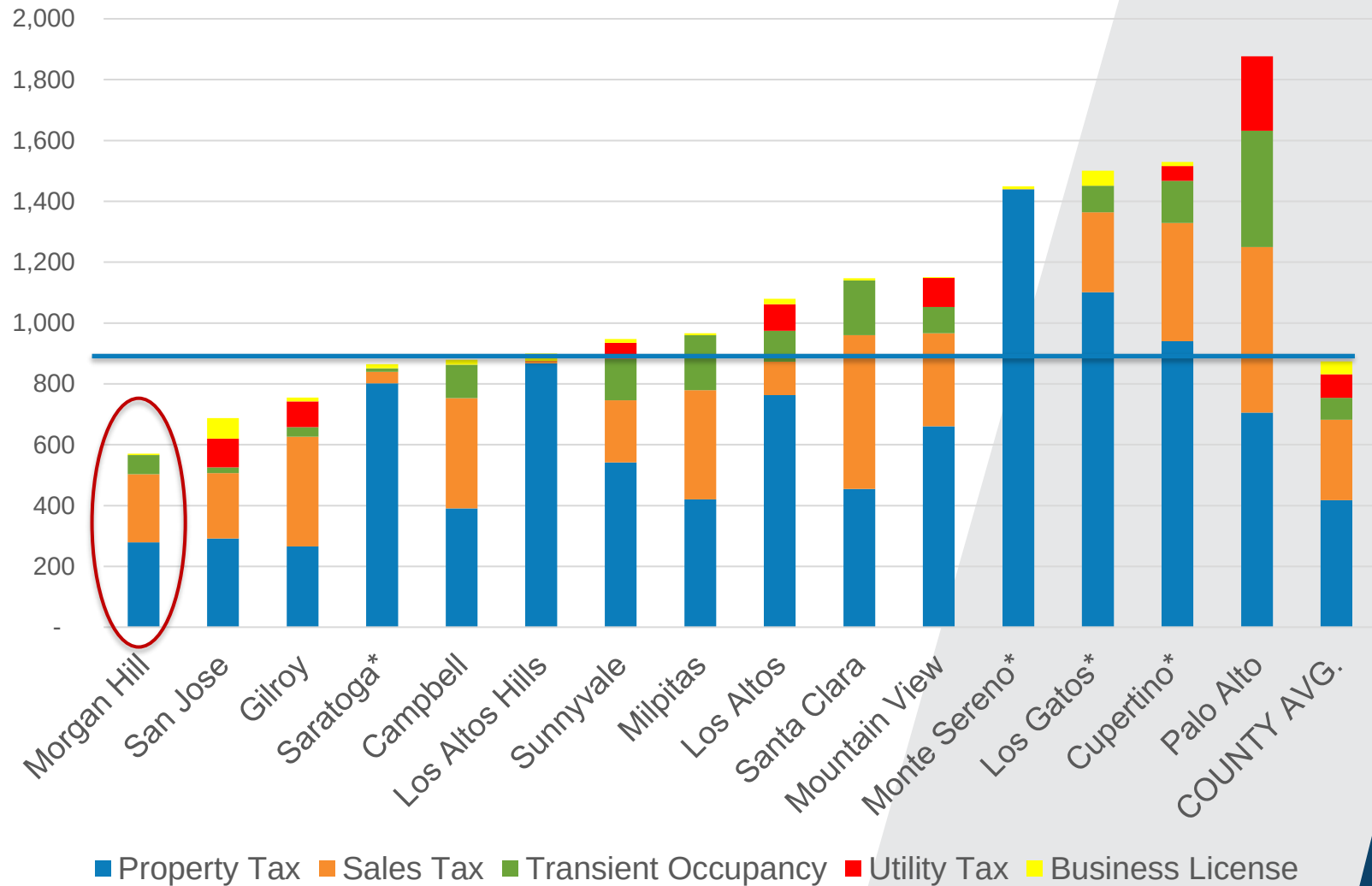
General Fund – Transient Occupancy Tax

FY 2020-21 = ~~\$2.5~~ **\$1.8M**, 5% of GF



Morgan Hill TOT Rate = 11%,
100% of proceeds to MH, not shared

General Fund Major Tax Revenue Comparison – Per Capita



*Includes property tax revenues for Santa Clara County Central Fire District

COVID-19 Fiscal Impacts



COVID-19 Economic Recovery Assumptions

Phase I:

- Current estimates are aligned with Phase I
- Shelter-in-place lifted end of May with gradual re-opening
- Recreation facilities open in July with reduced/modified service and hours
- Phase back in services and programs
- Similar fiscal impacts as the Great Recession or worse
- Some fiscal impact from second wave of COVID-19

COVID-19 Economic Recovery Assumptions (cont.)

Phase II

- Extended shelter-in-place
- Extended facilities' closure and slower phasing back in services and programs
- Significant impact from second wave of COVID-19
- More severe fiscal impacts with further reduction in revenues

Fiscal Impacts of COVID-19 on Major Revenue Sources

Property Tax **Loss** Over 3 Fiscal Years

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.1M	\$0.1M	\$0.6M	\$0.8M

Phase I Assumptions:

- Lag effect
- FY2019-20 higher than budgeted
- 0% growth rate in forecast



Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Sales Tax **Loss** Over 3 Fiscal Years (Updated)

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$1.5M	\$1.8 \$2.4M	\$1.5 \$1.6M	\$4.8 \$5.5M

Phase I Assumptions:

- Based on estimates from City's sales tax consultant (HdL), with additional modifications
- Includes Governor's delay/defer assistance programs

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Recreation Services **Loss** Over 3 Fiscal Years (Updated)

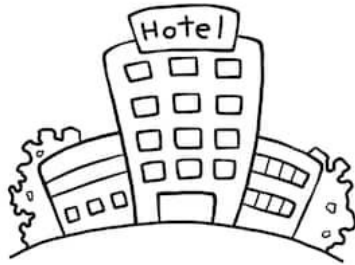
FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.9 \$2.1M	\$0.8 \$1.5M	\$0.4 \$0.9M	\$2.1 \$4.5M



Phase I Assumptions:

- facilities open in July with reduced/modified service and hours
- Decrease in membership and registrants

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)



Hotel Tax **Loss** Over 3 Fiscal Years (Updated)

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.9M	\$0.6 \$1.3M	\$0.2 \$0.3M	\$1.7 \$2.5M

Phase I Assumptions:

- Extended occupancy rate of approximately 20% with slower gradual return to normalcy

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Development (Fund 206) **Loss** Over 3 Fiscal Years **(Updated)**

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$1.2M	\$1.3 \$1.5M	\$0.3 \$0.5M	\$2.8 \$3.2M

Phase I Assumptions:

- Estimated 25% reduction in projects and associated revenues in FY 2019-20 & FY 2020-21
- Slower recovery in development activities (FY2021-22)

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Other (Gas Tax and Property Transfer Tax) **Loss** Over 3 Fiscal Years **(New)**

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.2M	\$0.2M	\$0.1M	\$0.5M

Phase I Assumptions:

- Gas Tax: reduced consumption due to shelter-in-place
- Transfer Tax: reduced revenue due to halt in real estate transactions due to shelter-in-place

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

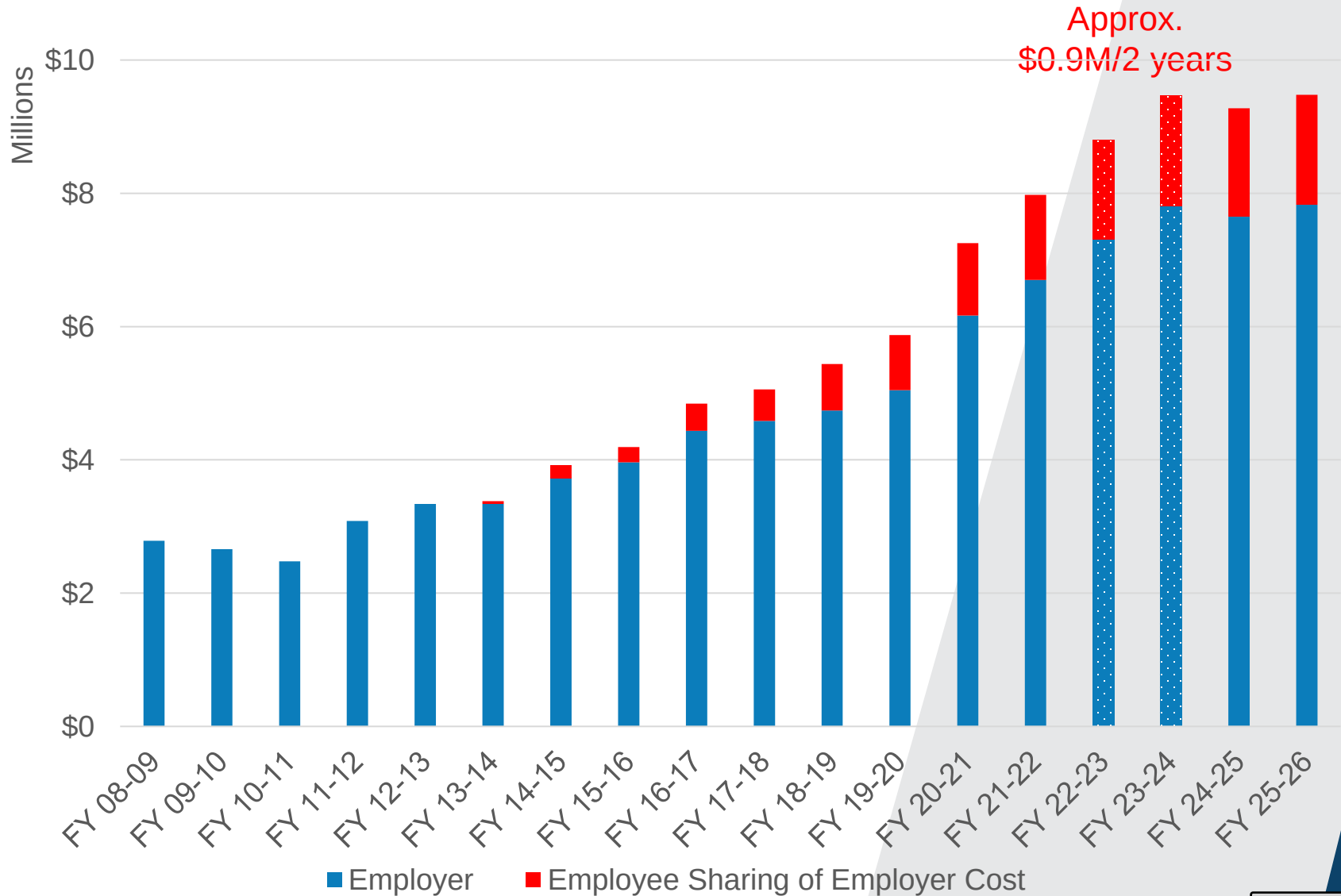
Total Phase I Revenue **Loss** by Major Revenue Categories Over 3 Fiscal Years **(Updated)**

Revenue Type	FY2019-20	FY2020-21	FY2021-22	TOTAL
Property Tax	\$0.1M	\$0.1M	\$0.6M	\$0.8M
Sales Tax	\$1.5M	\$2.4M	\$1.6M	\$5.5M
Recreation	\$2.1M	\$1.5M	\$0.9M	\$4.5M
Hotel Tax	\$0.9M	\$1.3M	\$0.3M	\$2.5M
Fund 206	\$1.2M	\$1.5M	\$0.5M	\$3.2M
Other (Gas Tax, Transfer Tax)	\$0.2M	\$0.2M	\$0.1M	\$0.5M
TOTAL	\$6.0M	\$7.0M	\$4.0M	\$17.0M

Expenditure Adjustments Included in Recommended Budget

- Recreation facility closures
- Recreation cost reductions based on gradual reopening
- Hiring freeze, except public safety
- Election contract services
- Drawdown on General Liability Insurance reserve
- Elimination of all non-essential building maintenance projects

COVID-19 Impact: Pension Cost



Additional Expenditure Reductions and Adjustments



Expenditure Reduction and Adjustments Summary

Fund	Description	YEP 19-20	Rec. 20-21	Rec. 21-22	Total
General Fund (010)	Community Services	\$1.9M	\$1.0M	\$1.1M	\$4.0M
General Fund (010)	Police	\$0.3M	\$0.1M	\$0.1M	\$0.5M
General Fund (010)	Fire	\$0.1M	\$0.3M	\$0.2M	\$0.6M
General Fund (010)	Administration	\$0.2M	\$0.7M	\$0.7M	\$1.6M
General Fund (010)	Development Services	-	\$0.2M	\$0.3M	\$0.5M
Dev. Services (206)	Development Services	-	\$0.9M	\$0.7M	\$1.6M
TOTAL		\$2.5M	\$3.2M	\$3.1M	\$8.8M

Estimated savings previously included in Recommended Budget = \$2.5M
(Building Maintenance, General Liability Reserve Draw, Recreation facilities closure etc.)

Community Services - \$4.0M

- Historic cost recovery rate of 90%
- Should Recreation Cost Recovery not be obtained, other General Fund services will be severely impacted
- Facilities are closed = no revenue

Community Services - \$4.0M (cont.)

Severe impacts are already occurring

- Almost all part-time teammates have been furloughed
- We don't know when and if we will bring them back
- Almost all partner staff at the YMCA are furloughed
- Contractor staff not working

Virtual Membership

- Retaining members for when we re-open
- Only 1% of members have opted to continue to pay to support the virtual membership

Community Services - \$4.0M (cont.)

Re-Opening Facilities

Unknowns

- When can we re-open?
- Under what conditions will we re-open?
- Will members and users come back?

Due to COVID-19 a new baseline must be developed

- Minimize structure to reduce costs
- Different needs for re-opening (cleaning and social distancing)
- Continue virtualization and move to online transactions

Community Services - \$4.0M (cont.)

New Baseline Changes and Budget Reduction Strategy

- New limited hours as Facilities start to open (CRC/AC/CCC)
- Suspend non-fee-based events and promotions
- Suspend operation of Spray Pad at the CCC
- Suspend Masters Swim Program
- Eliminate Marketing and non-fee-based events
- Reduce Mailing of Recreation Activity Guide
- Transfer of resources to future ongoing cleaning and social distancing requirements

Community Services - \$4.0M (cont.)

Staffing Impacts

- Reduce part-time staff, bring back as needed in appropriate roles
- Update partnership with the YMCA
- Reduce 2.5 FTEs in the Recreation Division via retirement, transfer, and elimination of vacant positions
- Redistribution of duties

Community Services - \$4.0M (cont.)

Impacts to Community

- Less available hours for all programming at the CRC and Aquatics Center
- Reduce Senior Center Hours and less managerial oversight (Supervisor will take on other roles, support staff will have less hours to focus solely on Seniors)
- Teen Center will be open only 4 days per week instead of 6

Community Services - \$4.0M (cont.)

Impacts to Community (cont.):

- No special events until funding and staffing levels are restored (Get Fit Event, Summer Fun in the Park, Latin Concert, Latin Zumbathon)
- Spray Pad at the CCC not open until funding and staffing restored
- Reduce Skate Park oversight
- Reduce outreach to gain participation in programs for underserved communities

Community Services - \$4.0M (cont.)

Impacts to Community (cont.):

- Community Promotions and Support for Partner Organizations
 1. Financial Support for Partner Organizations
Hosting Events or Providing Services for the City
 2. Fee Waivers for Rental of Banquet Rooms at CCC
 3. Low Cost or Free Use of Partner Organizations

Police - \$0.5M

Personnel

- Reserve officer pay eliminated (volunteer basis)

Services

- Elimination of cat sheltering and spay/neuter assistance
- Eliminate National Night Out sponsorship, Citizens Police Academy training, Parent Project training, DUI checkpoints supplies and Explorer training
- Other software subscriptions

Fire - \$0.6M

Services

- Savings in CALFIRE contract due to vacancies and/or budget to actuals

Administration/Citywide - \$1.6M

Personnel

- City Manager, City Attorney, and Management, Professional and Confidential COLA eliminated
- Reassign Office Assistant II (.5 FTE) from Recreation to Utility Billing/City Hall
- Eliminate non-CRC gym reimbursement
- Reduction in salary COLA for forecast years by 1%
- Reallocate Assistant City Attorney into GF (25% - additional cost)

Services

- Reduce services, supplies and training

Development Services - \$2.1M

Economic Development

- Reduce PT Temp. staffing
- Reduce supplies and contractual services

Fund 206 loan reduced by \$1.1M to \$1.7M by following actions:

- Reduction of nearly all training and conferences, but for those required for State Certification (ex. Building Inspectors), ISO rating and/or maintenance of Professional Designations (ex. AICP)
- Reduction in Contract Services by 50% (preserved Stormwater and partial outside Plan Check in Land Development Engineering and Building)

Development Services (cont.)

- Terminate contract for Northeast Quadrant Master Urban Design guidance
- Termination of most Part Time employees
- Shift two Current Planners from Fund 206 (Current Planning) to Fund 207 (Long Range Planning) for one year

Development Services (cont.)

- Remove consultant service projects in Long Range Planning with in-house personnel preparation of State-mandated updates to Housing Element and Safety/Hazard Element as well as amendment to Traffic and Circulation Element and newly required Environmental Justice Element
- Remove plans for preparation of Monterey Corridor Specific Plan preparation and related EIR

Development Services (cont.)

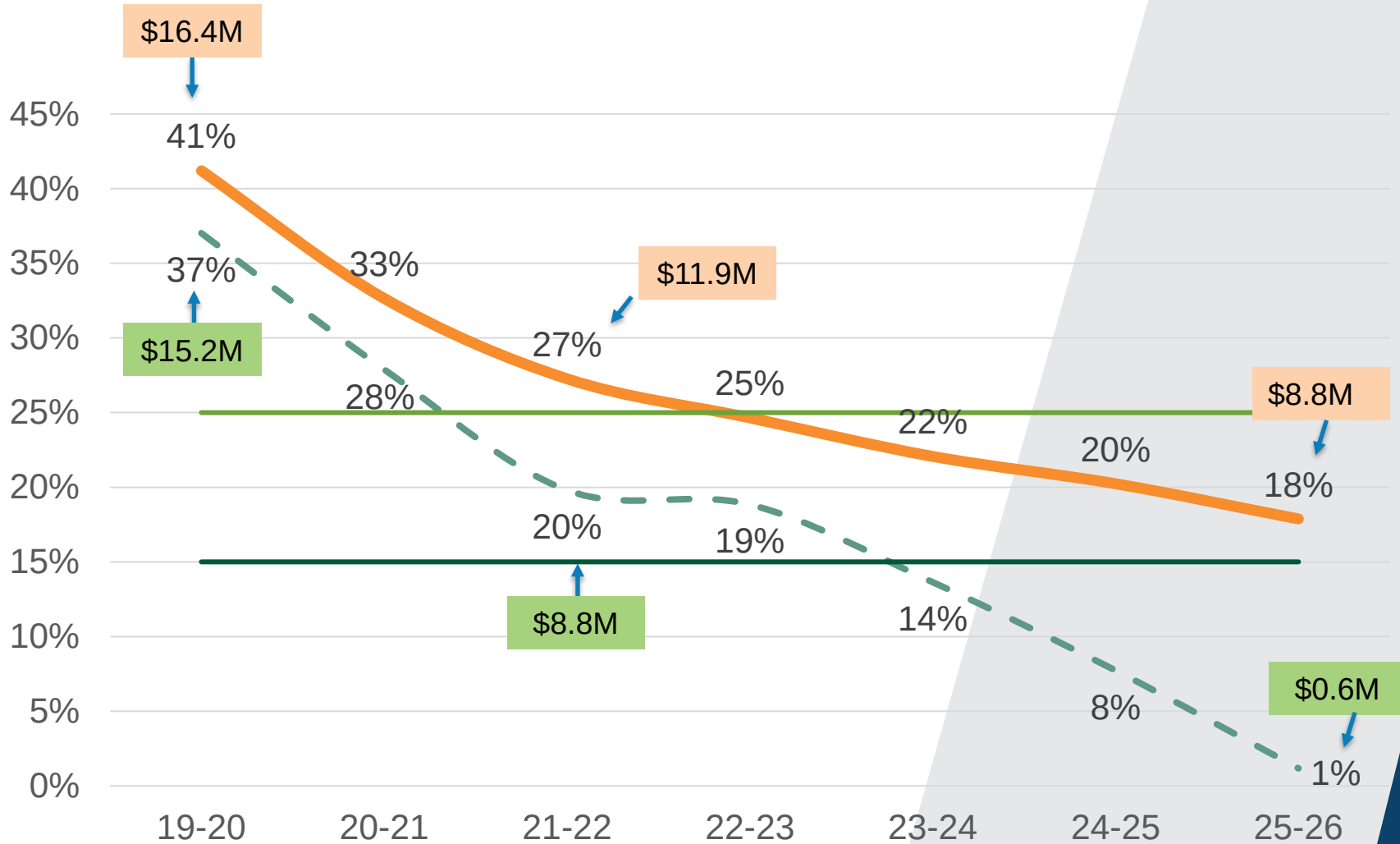
- Restructure Development Services to consolidate Land Development Engineering with Engineering and Utilities under direction of Public Services Director to achieve co-funding and flexibility to engineering functions, reducing cost to Fund 206
- Proposal to fund new development services fee study to reflect appropriate cost recovery revenue on existing permits
- Eliminate funding for Assistant City Manager (Development Services) position in January 2021

Development Services (cont.)

Unrecoverable Expenses:

- **Planning**: \$514K/year – Public counter, general information, strategic initiatives, and special projects
- **Engineering**: \$194K/year – Flood and storm water programs, public counter, general information, and special projects
- **Building**: \$117K/year – Public counter, general information, and code compliance

General Fund Six Year Forecast

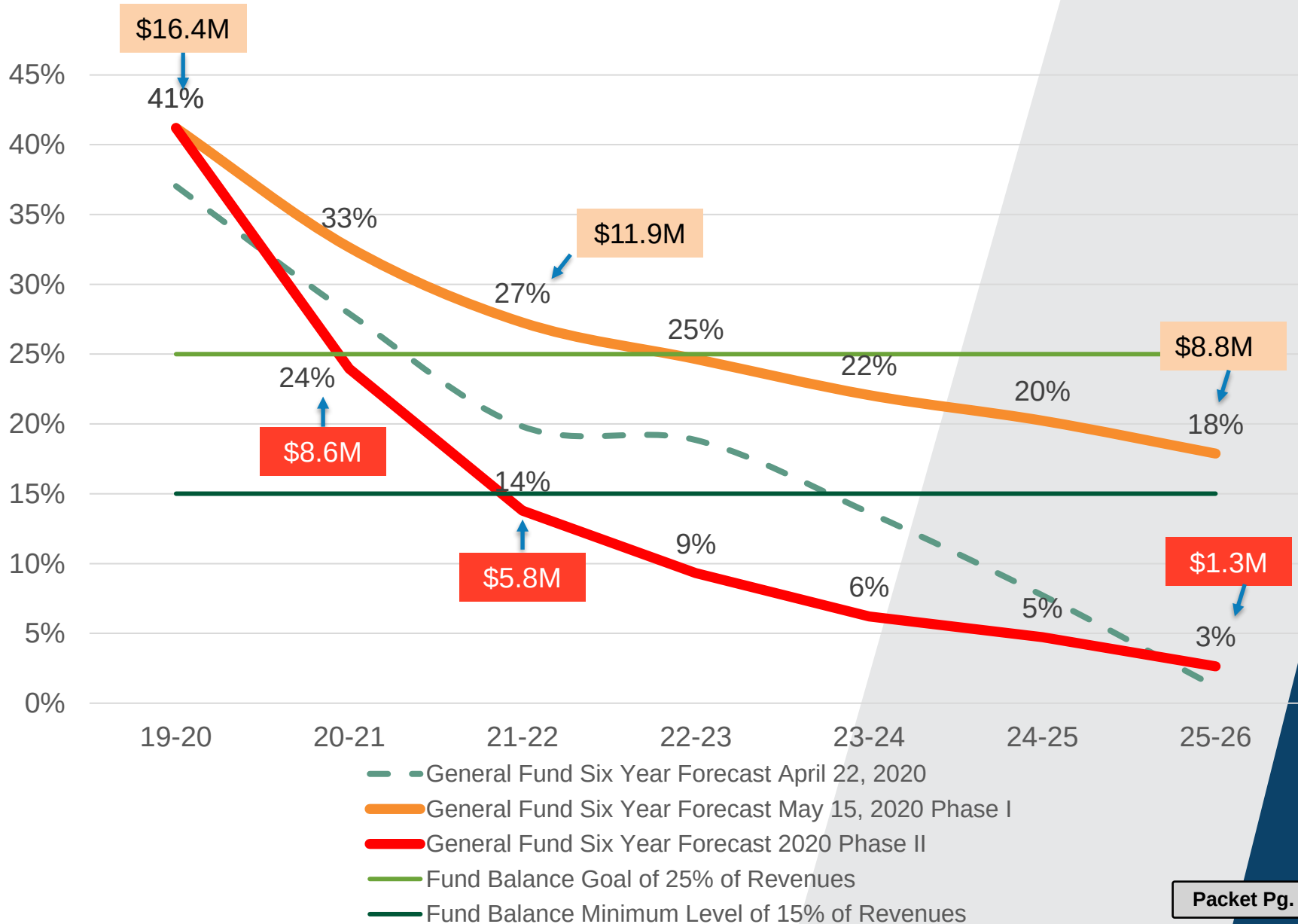


- General Fund Six Year Forecast April 22, 2020
- General Fund Six Year Forecast May 15, 2020 Phase I
- Fund Balance Goal of 25% of Revenues
- Fund Balance Minimum Level of 15% of Revenues

Phase II (Potential Additional Impacts)



General Fund Six Year Forecast - Phase II



Potential Phase II Expenditure Reductions

- Open all bargaining unit contracts to adjust scheduled COLA, enact furloughs or equivalent reductions
- Further reduction in community programs/services
- Additional Departmental reductions in supplies and services
- Suspend Fleet Replacement Contribution (1 FY)
- Suspend Worker's Compensation Contribution (1 FY)
- Suspend General Fund support for Street CIP
- Suspend OPEB Trust Fund contributions

Interfund Loan Policy



Interfund Loans and Policy

Policy

- Adopted June 7, 2017
- All loans need to be approved by City Council
- Interest rate at investment portfolio or LAIF, whichever is higher
- Maximum term of 10 years

Current Interfund Loans

- Storm Drainage to Traffic Impact for Hale Ave. Extension on October 2018
- \$2.25 million repaid in 3 years

Recommended Reserve Policy

15%: “If reserves do – or are projected to – fall below the 15% minimum level at any time, then policy action must be taken within 30 days of such event or projection to rebuild actual or projected reserves back up to the 15% minimum level within the subsequent 12 months”

25%: “Similarly, if reserves do – or are projected to – fall below the long term goal of 25% at any time, then policy action must be taken no later than the next fiscal year such that structural budget balance is projected to be regained within three years of the 25% floor being pierced. Once structural budget balance is regained, steady progress toward the 25% long-term goal for reserves must continue”

Liquidity and Cash Balance

Liquidity:

General Fund Balance

- Unrestricted, un-designated
- Cash and short-term receivables less short-term payables
- General Fund Reserve of \$17.9M at 6/30/19 mostly comprised of cash and investments of \$16.1M

Liquidity and Cash Balance (cont.)

CASH ACTIVITY SUMMARY FY 2019-20

Fund Type	07/1/19 Balance	Change in Cash Balance	3/31/2020 Balance
General Fund	\$ 16,094,062	\$ (2,968,859)	\$ 13,125,203
Community Development	2,835,370	(1,930,700)	904,670
RDA Successor Agency (except Housing)	10,774,671	3,830,862	14,605,533
Housing Successor Agency/ CDBG	4,065,899	(329,728)	3,736,171
Water - Operations	2,862,753	1,014,788	3,877,541
Water Other	6,212,393	2,351,007	8,563,399
Sewer - Operations	1,677,931	1,301,768	2,979,699
Sewer Other	31,500,213	(613,818)	30,886,395
Other Special Revenue	5,130,146	383,166	5,513,311
Streets and Capital Projects (except RDA)	43,758,217	(5,390,006)	38,368,211
Debt Service	240,894	(119,463)	121,431
Internal Service	15,531,375	1,567,853	17,099,228
Agency Funds (assessment dists./refundable deposits)	4,307,504	(1,716,937)	2,590,567
Total	\$ 144,991,427	\$ (2,620,066)	\$ 142,371,361

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.

Existing Unfunded Needs



Unfunded General Fund Needs

Total Annual Unfunded General Fund Needs = **\$6M**

- Police \$1.3M
- Fire \$2.3M
- Building Maintenance and LAD **\$0.1M Updated**
- Pavement Rehabilitation **\$1.1M Updated**
- Street Maintenance \$0.2M
- ~~Park Maintenance \$0.7M~~ ← Addressed via Quimby Fee
- Operational loss due to RDCS Suspension **\$1.0M**

Unfunded Liabilities



Unfunded Liabilities

Total Unfunded Liabilities = **\$56.4M**

- Public Employees Retirement System (PERS) - \$51.6M
 - Other Postemployment Benefits (OPEB) - \$4.8M
 - General Fund Share = 67% or \$37.8M
- Current Funded Status
 - Misc. Plan = 71.6%
 - Safety Plan = 68.3%

Pension - Funded Status

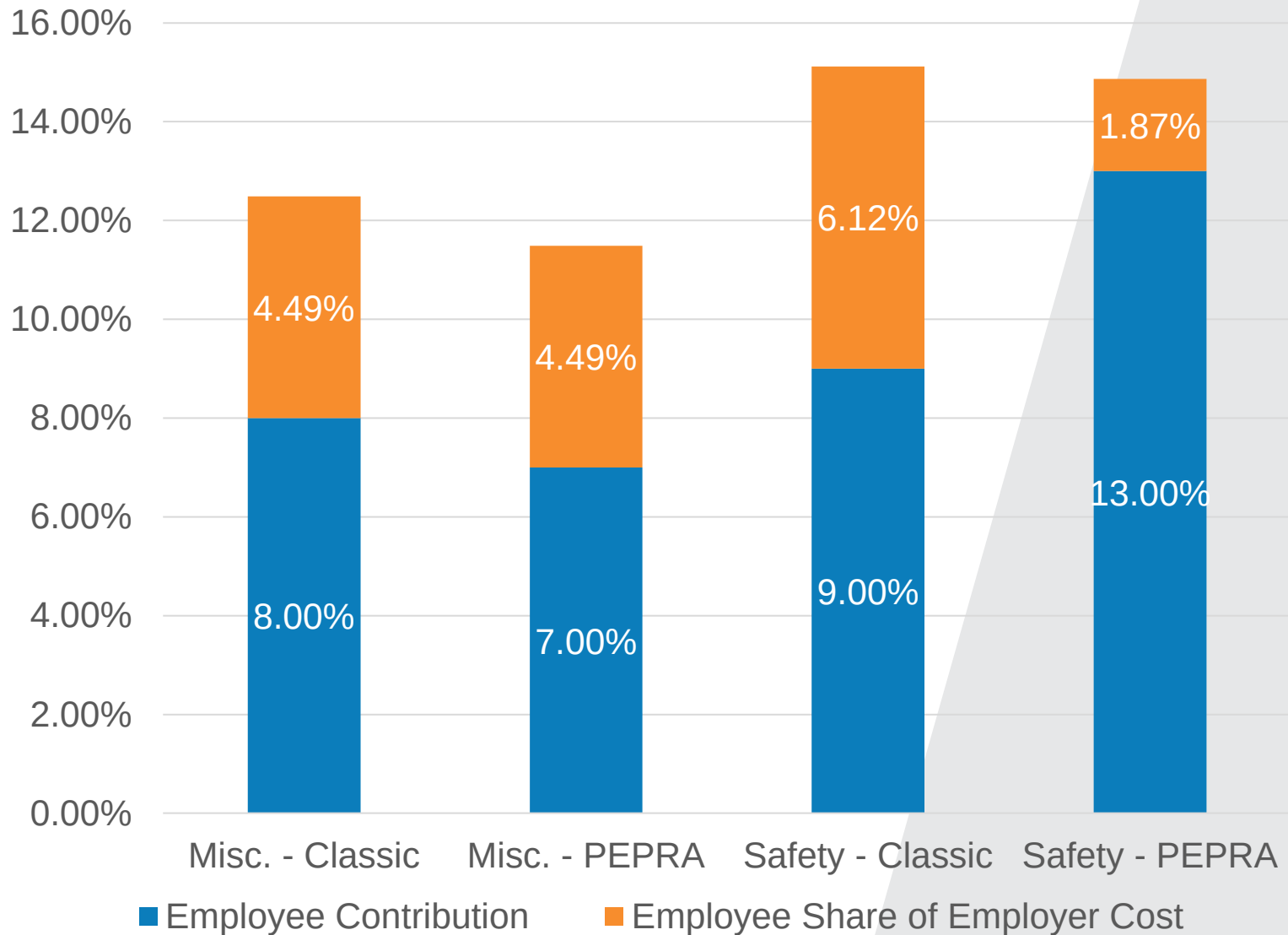
Agency Name	Safety Plan	Misc. Plan
Morgan Hill	68.30%	71.60%
Monte Sereno	N/A	88.20%
Los Altos Hills	N/A	83.60%
Saratoga	N/A	81.80%
Campbell	68.20%	72.20%
Mountain View	69.40%	71.80%
Los Altos	69.30%	70.00%
Santa Clara (County)	67.50%	69.50%
Gilroy	68.10%	68.80%
Sunnyvale	66.40%	68.70%
Milpitas	63.10%	68.50%
Los Gatos	72.00%	68.40%
Cupertino	N/A	66.30%
Palo Alto	62.20%	65.80%
Santa Clara (City)	64.70%	61.00%

Groups	Count	%
Classic	118	67%
PEPRA	57	33%
Total	175	100%

Valuation reports as of FY17-18.

CalPERS funded status for public agencies is 69.8% as of FY17-18.

Pension – Employee Cost Sharing



Pension – Discount Rate Change

- Discount Rate = the expected rate of return on portfolio investments
- In 2016, CalPERS Board changed the discount rate from 7.5% to 7% over three fiscal years, with corresponding incremental increases in payments over 8-year smoothing

Pension – Discount Rate Change

(cont.)

- When the discount rate is reduced, it decreases the funded status
- An additional 0.25% reduction = approximately \$1M/year, before employee sharing
- CalPERS Board may consider an adjustment this fall

Enterprise Funds



Enterprise Funds - Water

- Reduction of revenue to account for bad debt and lower commercial usage offset by increase in grant revenue from Valley Water
 - Anticipate reduced consumption in commercial/industrial, and increased consumption in residential consumption due to shelter-in-place
 - Anticipate increase in bad debt/write-offs due to Governor's order preventing shut-offs
- Groundwater Charge: Valley Water deferring July 1 increase, Board to revisit amount and time in October 2020

Enterprise Funds - Wastewater

- Reduction of revenue by \$300K, to account for bad debt and lower commercial usage
 - No impact of increased residential consumption anticipated as it is based on fixed monthly charge adjusted annually
 - Anticipate increase in bad debt/write-offs due to Governor's order preventing shut-offs
- Planned bond issuance for capital projects outlined in Capital Improvement Program – determining the final amount needed and will return to City Council when appropriate

Sustainable Morgan Hill 2020 – 2021 Strategic Priorities Work Plan Amended



Fiscal Sustainability

- Continue to monitor the COVID-19 impacts and present adjustments as necessary
- Continue the Engage Morgan Hill efforts (conversation about services, funding and priorities)
- ~~Consider a revenue measure in November 2020 (not recommended)~~
- Employ a sustainable budget strategy and identify funding gap
- Define the funding plans for police and fire services, and the City's infrastructure needs

Affordable Housing and Homelessness

- In preparation for the Statewide 6th Housing Cycle, update the Housing Element of the General Plan to respond to new production mandates. The City will actively participate in the development of formula and allocations of “fair share” housing unit assignments
- Engage the community in decisions about where to locate new housing density requirements and necessary on-going changes to objective design criteria which guide quality development
- Continue to respond to the new and proposed housing legislative and policy matters to the benefit of the community

Affordable Housing and Homelessness (cont.)

- Respond to the Governor's 2020 Homelessness initiatives by advocating for direct local dollars and direct access to funding for communities of less than 50,000 population
- Seek out partnerships with non-profit housing developers to create new housing opportunities directly aligned with the City's "fair share" Regional Housing Needs Allocation (RHNA)
- Work with the non-profit owner of affordable units to rehabilitate and extend the life of vital housing supplies at Depot Commons, the Willows, Skeels Hotel, and Villa Ciolino

Community Engagement and Messaging

- Continue to facilitate the Engage Morgan Hill process
- Continue to inform the community about significant development projects
- ~~Provide outreach and engagement with the community on the 2020 United States Census (Completion in August)~~
- Continue to find better ways to reach members of the community that do not speak English
- **Continue to explore, implement and improve upon the use of tools that allow for virtual meetings, communication and engagement**
- **Continue to monitor and evaluate communication and engagement tools and strategies with a continuous improvement focus**

Economic Development

- Complete Request for Proposal (RFP) process and select provider for telecommunications services for City facilities
- Complete an Industrial Land Preservation Policy
- Complete a Retail Concentration Strategy
- Economic Development Outreach and ~~Education/Awareness Campaign~~
- **Business Resiliency Program**

Transportation

- Respond to the Environmental Impact Report on the High-Speed Rail Authority's (HSRA) preferred alternative
- Continue efforts on Hale Avenue extension
- Advocacy will include:
 - Working with the Valley Transportation Authority (VTA), Caltrain, the County, the HSRA and the State to enhance service, secure funding for transportation projects and road maintenance, and protect the community from negative impacts of regional projects
 - Expansion of Highway 101 between Morgan Hill and Gilroy to reduce pass-through traffic and improve commute traffic for South County residents
 - Electrification of commuter rail from San Francisco to Gilroy
 - Funding for priority projects in the South County

Strategies to Address Revenue Impacts



Multiple Ways to Address Revenue Impacts

- Use of reserves/fund balance ✓
- Reduce expenditures ✓
- Seek COVID-19 State and Federal Funds as available ✓
- New revenue sources including ballot measures and Community Facilities District (CFD)

Other Strategies

- Spending money strategically to virtualize (CRM system, Laserfiche, broadband investment, etc.)
- Spend now to save in the future
- Keeping our core services so we can bring services and teammates back as we recover

Capital Improvement Program



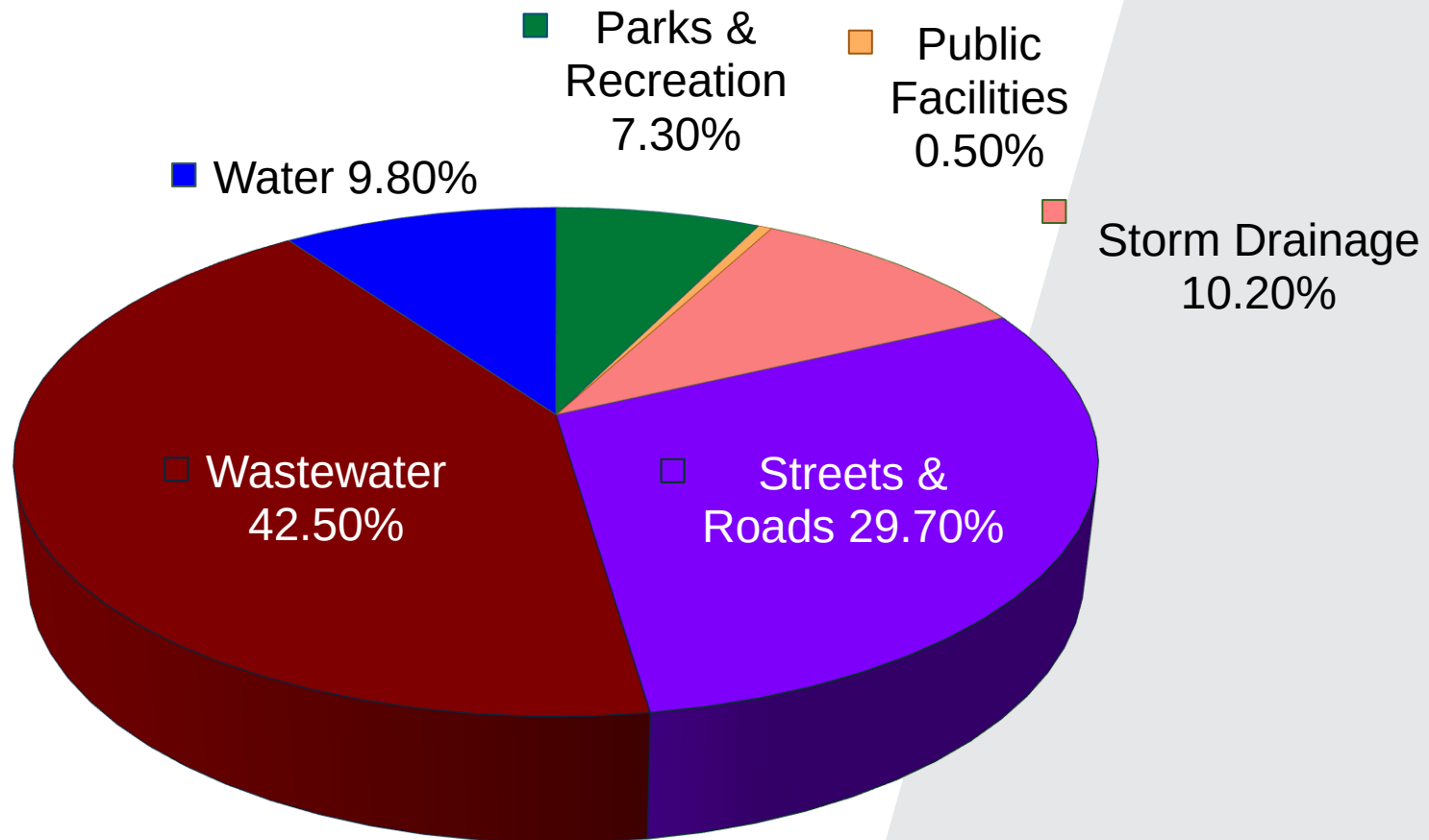
Purpose

- Present FY 2020-21 to 2025-26 Capital Improvement Program
- Discuss Key Projects
- Provide input and feedback on proposed CIP

Capital Improvement Program Summary (Updated)

Project Categories	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	Totals
1 Parks & Recreation	\$1,998,888	\$3,610,000	\$4,680,000	\$3,250,000	\$2,850,000	\$1,550,000	\$17,938,888
2 Public Facilities	\$140,000	\$220,000	\$5,300,000	\$220,000	\$500,000		\$6,380,000
3 Storm Drainage	\$5,500,000	\$2,370,000	\$2,650,000	\$350,000	\$2,650,000	\$350,000	\$13,870,000
4 Streets & Roads	\$19,150,000	\$3,780,000	\$4,650,000	\$4,150,000	\$4,150,000	\$4,200,000	\$40,080,000
5 Wastewater	\$19,056,599	\$13,706,786	\$27,468,322	\$24,843,700	\$6,331,200	\$2,393,700	\$93,800,307
6 Water	\$2,841,023	\$4,743,913	\$6,722,065	\$2,700,000	\$1,300,000	\$400,000	\$18,707,000
Totals	\$48,686,510	\$28,430,699	\$51,470,387	\$35,513,700	\$17,781,200	\$8,893,700	\$190,776,196

Budget by Project Category FY 2020-21 and 2020-22



Capital Improvement Program

Top 8 Projects FY 2020-21 & FY 2021-22

1. Hale Avenue Extension - \$16.8M
2. Sewer System Repair and Replacements - \$13.1M
3. Sewer Plant Expansion - \$11.8M
4. Pavement Rehabilitation Program - \$6.1M
5. Llagas Flood Control - \$4.5M
6. Water Supply Facility and Water Pipeline Repair and Replacement - \$3.1M
7. Storm System Expansion - \$2.7M
8. Borello School/Park - \$2.0M

Guiding Principles

- Projects must be consistent with the goals of the General Plan
- Projects included in an adopted Master Plan
- City Council priorities
- Addressing a maintenance or deficiency issue
- Available revenues to pay for project
- Long term maintenance is considered
- Legal uses of funds

CIP Changes from April 22

- Reduced revenue assumptions related to development impact fees
- Reduced revenue assumptions for Measure B and SB1
- Added Non-Profit Center Project

Current Projects Underway

- Magical Bridge Inclusive Playground Project
- Tennant Sewer Main Project
- Pedestrian Safety Projects
- Main Avenue Bike Lanes
- Madrone Channel Trail Project
- Butterfield Path Project
- CRC and Library Expansions

Parks and Recreation Highlights FY 20-21 & 21-22 Projects

Borello School Park - \$2M

- Joint park/school site off Peet Road

West Little Llagas Creek Trail - \$850,000

- Class 1 Trail south of Watsonville Road
- Primarily grant funded
- Limited additional maintenance necessary

Park Renovations - \$500,000

- Upgrade existing park and recreation facilities
- Support cost recovery

Parks and Recreation Highlights FY 20-21 & 21-22 Projects (cont.)

Sports Facility Planning- \$100,000

- Condit Road Facilities Concept Master Plan
- Environmental Review

Park Land Purchase- \$500,000

- Potential land bank of neighborhood park

Non-profit Center - \$800,000

- Development at CCC
- Will recover cost through tenant leases

Parks and Recreation Highlights Post FY21-22



5.a

- Potential Sand Volleyball Facilities
- Villa Mira Monte Expansion/Renovation
- Park and Recreation Facility Renovations
- Begin banking funding for Ball Field Center

Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Public Facilities Highlights

- New Fire Station - \$5.3M
Construction Commences FY22-23
- Police Department Expansion FY24-25

Storm Drainage Highlights FY 20-21 & 21-22 Projects

Llagas Flood Control - \$4.5M

- Project addresses storm water conveyance infrastructure that drains into the Upper Llagas Creek Flood Protection Project

Storm System Expansions \$2.5M

- Butterfield Basin Expansion
- Other future expansion projects

Trash Compliance - \$50,000

- Infrastructure planning for future mandated compliance projects

Streets and Roads Highlights FY 20-21 & 21-22 Projects

Pavement Rehabilitation- \$5.8M (2 years)

- Annual program intended to address City's pavement rehabilitation needs
- Primarily dedicated funding sources

Hale Avenue Extension \$17M

- Construct Hale Ave from Main to Spring Ave
- Primarily grant funding for construction
- Land acquisition and design completed (\$10M)

Sidewalk Repairs- \$150,000/yr

- Annual program to address damaged sidewalks

Wastewater Highlights

FY 20-21 & 21-22 Projects



5.a

Sewer System Repair & Replacements - \$13.1M

- Implement the required repairs and improvements needed to reduce inflow and infiltration

Treatment Plant Expansion (SCRWA) - \$31.5M

- Increased treatment capacity based on flow and organic loading

Wastewater Highlights

FY 20-21 & 21-22 Projects (cont.)

Lift Station Improvements - \$2.1M

- Renovate existing lift stations and force mains

New Trunk Line - \$29.2M

- Planning phase next 2 years
- Construction planned for FY22-23

Wastewater Planning - \$230,000

- Update plans including Master Plan

Water Highlights

FY 20-21 & 21-22 Projects

Well Demolition and Abandonment - \$700,000

- Required demolition of unused wells

Water Pipeline Repair and Replacement \$1.7M

- Various pipeline improvements to address aging infrastructure and reliability issues in the water distribution system

Holiday Lake Reservoir Improvements- \$6M

- Infrastructure improvements (pipes, storage, and pumping capacity) to Holiday Lake water systems to increase water delivery and reliability in the area

Unfunded or Partially Funded Projects

- Ball Field Development
- New Bike and Pedestrian Safety Projects
- Traffic Signal Pre-emption
- Corporation Yard Expansion/Renovation
- Storm System Trash Compliance

Commission Action

- **Planning Commission Meeting 5/12:**
 - Found the proposed CIP consistent with the General Plan
 - Expressed a desire to increase General Fund Spending on Pavement Rehab
- **Parks and Recreation Commission Review:**
 - Scheduled for June 19

Questions?



Engage Morgan Hill Community Advisory Group Input



Questions & Answers Public Comment Council Discussion



Next Steps



Upcoming Important Dates

Time	Date	Event	Location
7pm	Wednesday, June 17 th	City Council Budget Hearing/Adoption	TBD

Questions?



CITY OF MORGAN HILL

Fee Waiver and Community Use

Presentation to Council for Budget Workshop

Community Services Staff believe there are three areas that should be discussed with the Council as part of the budget reduction strategy. These areas include:

1. Financial Support for Partner Organizations Hosting Events or Providing Services for the City
2. Fee Waivers for Rentals of Banquet Rooms at the Community and Cultural Center
3. Low Cost or Free Use for Partner Organizations

Below is a summary for each area along with specific recommendations.

Area 1: Financial Support for Organizations Hosting Events or Providing Services for the City

The funding for each of the groups is budgeted in the City Council Community Promotions funding or in the Community Services Division budget and supported entirely by the General Fund. Staff is recommending reductions in the funding for these organizations. Should the City's fiscal situation improve, funding may be restored.

Group	Detail
Morgan Hill Downtown Assoc (MHDA) Safe Trick or Treat & Holiday Tree Request \$12,000 (\$6,000 for each) Recommendation \$6,000 Total	In conversations with the MHDA, the group indicated if provided limited funding it will support the Holiday Tree over the Safe Trick or Treat event. Given the current scenario, both the MHDA and City staff believe the Safe Trick or Treat is highly unlikely to be held in 2020.
Morgan Hill Kiwanis Club Holiday Lights Parade Request \$6,000 Recommendation \$4,500	The Kiwanis have not discussed as a group, but event representatives have noted that if funding is at 50%, event will be significantly reduced, if there is no funding, they would not host the event.
Independence Day Celebrations Freedom Fest Events Request \$30,000 Recommendation \$15,000	It is unknown if any events at all will occur in 2020. If the funding was reduced by 50% in future years, the group noted they will try to adapt and may do less. Their priorities will be the fireworks and parade. The \$30,000 request was a significant increase from prior years (\$24,000).
South Valley Civic Theater Past Annual Funding \$10,000 Recommendation \$2,500	This funding supports educational outreach activities, tickets, and cast fee waivers to increase access to participants and audiences. These programs would be reduced should funding be reduced.
Healthier Kids Foundation (HKF) Past Annual Funding \$20,000 Recommendation \$10,000	HKF uses the City's funding as a match for their own funding, which allows for Morgan Hill to receive more significant support than other communities. If funding were eliminated the program would be severely reduced in Morgan Hill, not only reducing Morgan Hill funded programs, but also the matching funding provided by HKF. HKF would be able to continue services for an unknown number of years in a more limited capacity with a 50% reduction in funding.
Morgan Hill Historical Society (MHHS) Past Annual Funding \$20,000 Recommendation \$15,000	MHHS uses the funding to maintain Villa Mira Monte. Should the MHHS become insolvent, the site would revert to ownership by the City. This could create increased costs for the City. The group is conducting review of minimum cost structure to maintain facility and landscaping.
United Way 211 Past Annual Funding \$5,000 Recommendation \$0	While the City approved this funding on request from the organization, it was never invoiced to the City nor has the City paid into this in the past.
Boys and Girls Club (BGC) Park Place Program Past Annual Funding \$72,000 Recommendation \$45,000 Friendly Inn Program	Per the Friendly Inn Lease agreement, the BGC will receive \$6,000 in FY 20/21 and \$3,000 in FY21/22 and then no funding support for Friendly Inn operations in future years. The BGC separately runs the after-school program at Park Place for the City. The City is recommending funding for that program be reduced from \$72,000 annually to \$45,000 annually. This will reduce staffing levels, but still allow the program to continue.

Recommendation: \$6,000 FY20/21,
\$3,000 FY21/22, \$0 Future years

Area 2: Fee Waivers for Rentals of Banquet Rooms at the Community and Cultural Center

The following groups request a waiver of fees annually for their events. The Council could consider reducing or eliminating these fee waivers. Fee waiver requests total approximately \$6,000. City staff is recommending reducing fee waivers for these groups to 50%.

Indian Association of South Santa Clara County Flag Raising Event Fees Waiver Request: \$615	The fee waiver is for the use of amphitheater. The organization pays for City event staff time. Should the fee waiver be eliminated or reduced, IASSC would likely scale down the event, with a flag raising at the CCC and a smaller celebration at a picnic area if available. It is not likely the City would be able to generate significant revenue during the time booked as the Amphitheater is not in high demand during the time of this booking.
AAUW Annual Women's Conference Fees Waiver Request: \$2,466	The fee waiver is for use of Full CCC Facility on a Saturday. The organization pays for City event staff time. The AAUW noted they would likely be able to hold a conference with a 50% fee waiver through securing other sponsors or scaling it back a bit. If the entire waiver were eliminated, it would be very difficult, and the organization would have to re-evaluate the event. The event is scheduled to allow for evening bookings of the major banquet rooms at the CCC in the evening, therefore potential revenue is not lost with the hosting of the event.
Morgan Hill Community Foundation Philanthropy Night Event Fees Waiver Request: \$3,000	The fee waiver is for use of Full CCC Facility on a Friday. The organization pays for City event staff time. Should the City reduce or eliminate the fee waiver, the MHCF would continue to host the event but may look for an alternative venue. The group would need to reduce the amount they are able to grant out to local organizations or services. The City would make the Friday night available for booking and may receive rental revenue, should the MHCF not host this event.

Area 3: Low Cost or Free Use for Partner Organizations

The City provides low cost use of the City's small meeting rooms for Community organizations for an \$18 daily use fee. If the City were able to collect full pricing for these uses, the costs and revenue would total over \$17,000 annually. However, after conversations with the 20+ organizations booking under the Community Use Policy, it appears almost all of them would be unable to pay for any significant cost increase and would stop using the facility. For this reason, staff is not recommending any changes to the Community Use Policy.

In addition to the Community Use Policy, the City's rental policy allows for partner organizations to utilize City facilities at no cost. These are partners with the City via contract or government organizations providing service to Morgan Hill and include organizations such as the South County Youth Task Force, County of Santa Clara, the Red Cross and others. While most of these organizations would not pay a fee, these uses are noted as they take up City staff and resources. City staff are not recommending changes in this area at this time but may do so in the future should more long-term changes be necessary.

PRINCIPLES TO GUIDE THE SUSTAINABLE BUDGET STRATEGY

The City Council has adopted the following principles to guide the Sustainable Budget Strategy:

- A. Critical services should be maintained to the greatest extent possible.
- B. Resources should be allocated to the highest priority services.
- C. No city services or functions should be exempt from evaluation.
- D. “Across the Board” approaches shall be avoided because they are not aligned with the Council’s and community’s priorities.
- E. Reductions in service should position the City to take advantage of economic recovery.
- F. Budget reductions should be ongoing and not simply “one time only.”
- G. Council should commit to support employees during the transition and assist those who may be adversely impacted.
- H. Employees and their recognized bargaining units should be actively involved in developing options and implementing the transition.
- I. The City should continue to invest in building organizational capacity by supporting training and employee development.
- J. Community wide tax resources should be allocated first to support community wide services.
- K. Special services designed for only a few should be paid for by user charges and fees.
- L. Administrative and operational efficiencies should be maximized before pursuing new tax revenue.
- M. Reserves and one-time revenues should be used first to invest in capital outlay items that could reduce long range operating costs and, thereafter, fund transition expenses.
- N. New services should not be added, nor existing services expanded unless they are highly valued by the community and there is a willingness to pay for them.
- O. There should be regular monitoring of financial performance and opportunities to make mid-course corrections as warranted.
- P. City policies that may inhibit economic development, especially new retail development, should be reviewed regularly and modified.

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
General Fund

Item #	Department	Revenue/ Expenditure	Description	19-20	20-21	21-22
1	Recreation Service Fees	Revenue	Recreation facilities closure through June 30	(1,200,000)	(673,664)	(446,679)
2	General Fund Taxes	Revenue	Sales Tax		(581,000)	(100,000)
3	General Fund Taxes	Revenue	Transient Occupancy Tax (TOT)		(681,000)	(32,000)
4	General Fund Taxes	Revenue	Other Taxes	(200,000)	(150,000)	(50,000)
Total Revenue Adjustments				(1,400,000)	(2,085,664)	(628,679)
5	Administrative Services	Expenditure	Reallocation of Assistant City Attorney - 25%		(59,596)	(61,906)
6	Administrative Services	Expenditure	Reassign Permanent Part-Time Office Assistant II from Community Services to City Hall		24,000	24,480
7	Administrative Services	Expenditure	Elimination of Non-Centennial Recreation Center (CRC) gym reimbursement		9,000	9,000
8	Administrative Services	Expenditure	City Manager, City Attorney, Management, Professional, and Confidential COLA elimination		71,000	142,000
9	Administrative Services	Expenditure	Human Resources: Reduce/eliminate employee City-sponsored events		7,500	7,650
10	Administrative Services	Expenditure	Council Services and Records Management: New agenda management system		-	11,000
11	Administrative Services	Expenditure	Council Services and Records Management: Reductions in supplies and services		6,500	6,630
12	Administrative Services	Expenditure	Reduce scope of TOT Audits		20,000	20,400
13	Administrative Services	Expenditure	City Manager: Reductions in supplies and services		14,200	14,484
14	Administrative Services	Expenditure	City Attorney: Reductions in supplies and services		21,500	21,930
15	Administrative Services	Expenditure	Laserfiche Annual Contract Increase		(8,515)	(8,685)
16	Administrative Services	Expenditure	Revised loan from the General Fund to Development Services Fund	3,714	647,636	546,088
17	Administrative Services	Expenditure	Revised Year End Projections	193,615		
18	Community Services	Expenditure	Reduction of future building replacement charges (addressed via Quimby Fee)		87,998	90,638
19	Community Services	Expenditure	Eliminate pay increases for Part-Time Temporary employees		45,000	45,000
20	Community Services	Expenditure	Land Development Engineering reorganization		(10,541)	(11,401)
21	Community Services	Expenditure	Recreation and Community Services reorganization		760,000	860,000
22	Community Services	Expenditure	Revised Year End Projections	937,550		
23	Community Services	Expenditure	Reduce service offering at Park Place		30,000	30,000
24	Community Services	Expenditure	Reduce community promotions funding for two years (for details see additional supplement)		61,100	64,100
25	Community Services	Expenditure	Transfer from General Fund to Streets CIP for pavement rehab	1,000,000	-	-
26	Economic Development	Expenditure	Eliminate Part-Time Temporary position in Economic Development		36,400	37,128
27	Economic Development	Expenditure	Development Services reorganization		98,817	205,723
28	Economic Development	Expenditure	Reduction in supplies and services in Economic Development		57,025	58,166
29	Fire	Expenditure	CAL FIRE Contract - Personnel estimated savings	100,000	250,000	200,000
30	Police	Expenditure	Revised Year End Projections	304,489		
31	Police	Expenditure	Eliminate City services for cat sheltering and City's contribution for spay/neuter assistance		35,000	35,700
32	Police	Expenditure	Eliminate Parent Project Training Program		3,000	3,060
33	Police	Expenditure	Eliminate Citizens Police Academy Training Program		7,800	7,956
34	Police	Expenditure	Eliminate annual National Night Out event sponsored by Police Department		10,000	10,200
35	Police	Expenditure	Eliminate DUI Checkpoints		2,500	2,550
36	Police	Expenditure	Eliminate community outreach software platform		7,920	8,078

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
General Fund

Item #	Department	Revenue/ Expenditure	Description	19-20	20-21	21-22
37	Police	Expenditure	Eliminate PD fleet maintenance software subscription		5,000	5,100
38	Police	Expenditure	Eliminate emergency maintenance contract for PD Mobile Command vehicle (shared with the City of Gilroy)		12,500	12,750
39	Police	Expenditure	Eliminate Explorer Training/Conference		5,200	5,304
40	Police	Expenditure	Transition paid Reserves to unpaid		22,000	22,440
Total Expenditure Adjustments				2,539,368	2,279,944	2,425,563

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
Development Services Fund

Revenue/ Item # Expenditure	Description	19-20	20-21	21-22
1 Revenue	Additional revenue loss		(228,000)	(135,000)
Total Revenue Adjustments		-	(228,000)	(135,000)
2 Expenditure	Eliminate Part-Time Temporary employees in Planning		93,980	128,640
3 Expenditure	Move Senior and Associate Planner to Long Range Planning for one year		389,529	-
4 Expenditure	Land Development Engineering reorganization		210,821	228,011
5 Expenditure	Reallocation of Assistant City Attorney - 25%		59,596	61,906
6 Expenditure	Building: Reductions in supplies and services (contract services)		75,000	150,000
7 Expenditure	Planning: Reductions in supplies and services (training and education)		10,000	10,000
8 Expenditure	Land Development and Engineering: Reductions in supplies and services (contract services)		100,000	102,000
9 Expenditure	Development Services Fee Study		(60,000)	
Total Expenditure Adjustments		-	878,926	680,557



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

RECOMMENDATION(S)

Review and provide direction on the Economic Development Business Recovery Work Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint

POLICY CONSIDERATIONS

Should the Economic Development team realign priorities to address the economic crisis caused by the COVID-19 pandemic?

Should the City invest additional resources to implement an Economic Recovery Plan?

What are the activities that should be prioritized for Economic Development?

REPORT NARRATIVE:

The economic landscape has been drastically impacted by the COVID19 pandemic. Since the March 16th Shelter-in-Place (SIP) Order by the County of Santa Clara Public Health Department, most of the City's businesses have experienced closures or decreased production and hotels are functioning at record-low occupancy rates. This pandemic has created an economic crisis that is affecting all, including the City of Morgan Hill as it relates to tax revenue; including sales, property, transient occupancy and gas, and also recreation and development services revenues.

Over the past few months, the City's Economic Development team has provided support to businesses during this pandemic with the following activities:

1. Information on Business Resources:

The City has created a Business Resources webpage with information on various (local, state, and federal) loan assistance programs, tax assistance, and other resources. Three newsletters have been sent to all businesses with information on the latest financial and technical resources.

2. Business Outreach:

In partnership with the Chamber of Commerce and Visit Morgan Hill, a survey was sent to all businesses to better understand business impacts and needs. In addition to electronically deploying the survey, a post card was mailed to all businesses and calls were made to the top 100 employers and sales tax generators.

3. Outreach to Developers:

Outreach is underway to developers processing commercial and industrial projects. Many of these projects are impacted and may be delayed and/or may need to be value-engineered.

4. Technical & Financial Assistance:

The City is collaborating with the Small Business Development Center (SBDC) and the National Development Center to provide much needed financial assistance and technical support. Many Morgan Hill businesses have applied for the Economic Injury Disaster Program through federal Small Business Administration (SBA) that offers up to \$2 million in debt to small businesses, non-profits, and sole proprietors and for the Paycheck Protection Plan (PPP) that offers up to \$10 million and includes a loan forgiveness associated with re-employing or paying salary to affected employees up to eight weeks.

5. Business Resiliency Roundtables:

The team has hosted five Business Resiliency Roundtables on Financial Resources, Communications Strategies, Retail, Tourism, and Manufacturing. These roundtables include industry experts as guest speakers and offer a platform for businesses to share ideas and best practices. Attached is a summary of the findings from the Business Resiliency Roundtables (Attachment 1). A final roundtable for restaurants is scheduled for May 19th.

6. Post COVID-19 Economic Recovery:

Many of the small businesses will be challenged to survive the SIP. Industries may need to re-imagine business plans, creating new coping strategies for ongoing or repeated social distancing restrictions. These realities will impact business models for private, public (government) and non-profit organizations alike. Organizations will need to redesign workspaces, explore different delivery models like developing multiple shifts and alternate work schedules to reimagine the way people gather and convene.

The Economic Development team is compiling a list of strategies to support the economic recovery brought up at the Business Resiliency Roundtables, City Council meetings, and Townhall meetings. These ideas range in levels of complexity, ability to influence the City's financial recovery, and alignment with City's goals. Attachment 2 outlines how some of these ideas align and/or support City policies, shopping districts and industries. It also begins to identify if the recommendations require additional funding resources.

At the May 6, 2020 Council meeting, the City Council directed staff to develop recommendations for an economic recovery plan that responds to the needs of the local business community. The Council asked for strategies to support businesses; solutions by area and by industry; to explore collaborative solutions with non-profits, community and/or business organizations; and to review City policies that can support big and small, existing, and new businesses and developments.

Prior to the COVID-19 pandemic, the Economic Development team's work program was already focused on creating fiscal sustainability by growing existing companies, attracting new industry, growing professional jobs; and advancing goals for healthcare, retail, and tourism. The current goals for Fiscal Year 2020-21 include:

1. **Industrial Preservation Policy:** Update the Industrial Lands Analysis and develop a fiscal analysis of industrial areas that will help shape land use decisions that protect the job creating lands, further strengthening the General Plan (Fiscal Sustainability, Economic Development)
2. **Retail Concentration Strategy:** Develop a policy to strengthen retail nodes and identify requirements that pose impediments for retail and identify areas where retail is not likely to succeed (Economic Development)
3. **Property Business Improvement District:** Work with the Downtown businesses to create a Business Improvement District for property improvements and marketing and promotion for Downtown (Economic Development)
4. **High Speed Rail:** Respond to High Speed Rail's Environmental Impact Report/Study and advocate for mitigations including grade separations for traffic and circulation safety (Transportation, Advancing Regional Initiatives)
5. **Telecommunications RFP:** Commence contract negotiations with service provider to service City facilities and explore enhanced connectivity to residential and commercial neighborhoods (Fiscal Sustainability, Economic Development)
6. **Healthcare:** Assist with the County of Santa Clara's efforts to revitalize the DePaul Health Center, update the Healthcare Market and Service Needs Study and work with other healthcare providers to facilitate expansion of services in Morgan Hill (Supporting our Youth, Seniors, and Entire Community)
7. **Impact Fee Freeze Program:** Perform an evaluation of the program and develop program modifications as an ongoing City program (Economic Development)
8. **Urban Land Institute (ULI) Fall Conference:** Participate with the Silicon Valley Economic Development Alliance to host a program during the 2020 Fall ULI Conference taking place in San Francisco (Economic Development)
9. **Events, Marketing, and Promotions:** Build on the success of 2019 Choose Morgan Hill events, continue to enhance the economic development conversation at a local level. Host a second annual Speaker Series, Wine Stroll VIP business appreciation luncheon, host a Broker Breakfast Retail Runway in partnership with San Jose and Gilroy, and host annual Manufacturing Day (Economic Development)

The above work program continues the implementation of the City's 2017 Economic Blueprint, which is the City's strategy for economic sustainability. The Economic Blueprint is the result of a two-year effort that received hundreds of community inputs and was thoroughly vetted with industry experts and economic development peers to ensure the activities (actions and strategies) would have positive financial return on investment trackable by the tangible economic indicators.

An Economic Recovery Plan to support the business community and the City's economic recovery should consider the existing federal and state economic recovery programs, the local cost to address the impact of a global crisis, alignment with City goals and policies, complexity to implement, and the ability to meaningfully impact the businesses and the City's economic recovery. While there are dozens of strategies identified in Attachment 2, limited resources, coupled with an already robust work program should be considered when identifying priorities for the City's Economic Recovery Plan.

Cost	Alignment	Complexity	Impact
•Financial costs •Manpower requirements	•General Plan •Economic Blueprint •Telecommunications •Other	•Ease to implement •Timing •City Control	•Measures of Success •Opportunity Cost •Prioritization

Focused Economic Recovery Plan

The Economic Development team will continue to implement 7 of the 9 key goals listed in the 2020-21 work program, including:

1. **Industrial Preservation Policy**
2. **Retail Concentration Strategy**
3. **Property Business Improvement District**
4. **High Speed Rail EIR Review**
5. **Telecommunications RFP Implementation**
6. **Support Expansion of Healthcare Facilities**
7. **Free Freeze Program Evaluation**

The team will also continue with current activities supporting businesses during COVID-19, including a) collecting and disseminating information to employers and employees, b) continue with business outreach, c) outreach to the development community, d) providing technical and financial resources in partnership with community partners, and e) continue to identify and evaluate business resiliency strategies. In addition, specific to the COVID-19 re-opening, staff will **f) develop and distribute a handbook with protocols and strategies for re-opening by industry.**

Additionally, it is recommended the following activities be added and prioritized to support recovery of the restaurant industry, retailers, and small businesses, to encourage tourism, and to support new investment.

- A. **MONTEREY ROAD IMPROVEMENTS-** Work with the Engineering Division to explore repurposing a traffic lane and on-street parking along Monterey Road through Downtown that create more space for retailers, restaurants, pedestrians and cyclists. Explore curbside pickup and other on-street parking policies that will help with deliveries, valet parking, etc.
- B. **COMPREHENSIVE PRELIM REVIEW** - Formalize City preliminary review of conceptual commercial and industrial developments. City to schedule prelim review once a month to allow developers to schedule meetings and receive immediate feedback across departments.
- C. **CITY POLICIES** - Review City policies, including conditional use permits (CUPs) (hours of operation), Planned Developments (PDs) (clarity on development), Curbside Pickup, Telecommunication requirements for commercial and industrial developments, Placemaking and landscaping opportunities that will support the City's Place Branding, and Sign Policies that will support existing and new retail development.
- D. **EVENT PROGRAMMING, DOWNTOWN PLACEMAKING** - Explore partnerships with community organizations to develop and execute events that will meet new distancing requirements and will activate Downtown. Activities could include art fairs and other placemaking opportunities like chalk art, outdoor art galleries, murals, and temporary art projects.
- E. **BUY LOCAL CAMPAIGN** - Work with partners to execute a buy local campaign, creating awareness of local retailers and goods to encourage local spending.
- F. **POP UP RETAIL/WINDOW ACTIVATION** - Work with partners to develop opportunities to activate vacant windows and create non-brick and mortar retail opportunities, either with sidewalk activation or with temporary markets.
- G. **APPLY FOR EDA FEDERAL GRANT** - Apply to EDA for funding associated with enhancing telecommunications capacity to expand infrastructure to residential and commercial areas in Morgan Hill.

COMMUNITY ENGAGEMENT: Collaborate

Community outreach during the pandemic has been done through the City's 411 newsletter, a post card to all businesses, three newsletters, email communications, and Business Resiliency Roundtables. This report serves to inform the Council and community on potential next steps.

ALTERNATIVE ACTIONS:

The Council may choose to propose alternative COVID-19 economic recovery strategies.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2017, the City Council approved the Economic Blueprint that provides direction the priorities for the Economic Development work program.

On May 6, 2020, City Council directed staff to develop recommendations for an economic recovery plan that responds to the needs of the local business community.

FISCAL AND RESOURCE IMPACT:

The 2020-21 work program items are accounted for in the current Economic Development budget. To address the fiscal impacts to the City from COVID-19, adjustment to the Economic Development Budget was recommended at the May 15 Council Budget Workshop to remove the Economic Development Fellow as well as contractual services and supplies. Some of the previously planned marketing and promotions events (ULI conference, speaker series, wine stroll, broker breakfasts, etc.) are uncertain during COVID-19 and were likely not going to be feasible to implement, therefore were recommended to be suspended at this time.

The new activities listed for consideration in the Recovery Plan are not included in the proposed budget. If the Council chooses to move forward with the planning for the PBID, approximately \$45,000 will need to be allocated to that effort. The other activities will need to be evaluated based on existing work commitments and resources available after the approval of the proposed budget.

CEQA (California Environmental Quality Act):

Not a Project – the Economic Development work plan is an administrative activity of government that will not result in direct or indirect physical changes in the environment. While some projects on the work plan may result in changes to the physical environment, those projects will undergo appropriate environmental review on a project by project basis to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. Business Resiliency Roundtables Findings Summary
2. CMH Covid19 Economic Recovery Strategies

ATTACHMENT 1

Business Resiliency Roundtables Findings Summary**Retail Roundtable:**

- Developing a retail resiliency plan is crucial to moving forward. Plan should include giving customer choices and providing more e-commerce options
- Fed Ex recommendations for growing your businesses online presence
 - Visibility: how to attract visitors to your company
 - Utilize Search Engine Optimization (SEO) such as www.highervisability.com
 - Key word linking
 - Social Media
 - Monitor your data analytics
 - Use of Meta & Heta tags
 - Demand Generation: Assist with SEO's
 - Example would be [HubSpot](#), [Marketing 360](#), etc.
 - Understand your SE ranking
 - Access: How to get products to your customer safely
 - Provide alternatives, Fed Ex has secure locations spots for pick-up such as Walgreens or at their retail stores
 - Reverse logistics
 - 79% of customers return if returns are free
 - Transportation: Options a merchant chooses to deliver products to its customer
 - Fed Ex uses: Express, Ground, Customer etc. options
 - Inventory Management: Process of ordering, purchasing, storing,
 - Popular Inventor Management Applications: [Fishbowl](#), [Lightspeed](#), and [Stitch Labs](#)
 - E-Commerce Platforms: Online Store Applications:
 - Example of E-Commerce applications; [Magento](#), [WIX](#), [Big Commerce](#), [Shopify](#)
 - Payment: Important to complete a transaction
 - [Apple Pay](#), [Google Pay](#) [PayPal](#)
 - Marketplace: Online Site where people can buy variety of sellers
 - [Amazon](#), [Walmart](#), [eBay](#), etc.
 - Commerce Management: Managing the online product branding, customer experience, social media
 - Trade Facilitation: Complying with laws
 - Fed Ex can help with this
- Mainstream Boutique
 - Include Facebook Live videos of your store promotions and merchandise
 - Include private consulting meetings with your client
 - Have special events such as "Meet your Vendors"

ATTACHMENT 1

- Provide Curbside Pick-Up option for your customers
- Provide PPE to your customers
- Talk to your landlord and have them consider tagging rent to the end of your lease
- Consider home delivery options
- Work with your local and state government to delay minimum wage increases
- Businesses will need to:
 - Continue to adhere to social distancing rules
 - Think ahead of how people naturally move in their stores
 - PPE: will need to be provided to employees and available to customers
 - Use plexiglass at cashiers and points of customer contact
- Consider partnerships with other business. Example Rocca Market & Tinker Toys partnership
- Consider partnerships between business and property associations

Tourism Roundtable:

- Wineries are having virtual tastings, providing winemaker interviews
- Partnerships between wine and stores. Good example is Kirgin and Lawson Bakery
- VMH has created a business resource link on their site
- Advocacy in Sacramento should be considered to help businesses open safe & quickly
- Parklets should be considered so restaurants could expand their footage
- Road Diet should be considered
- Consider having smaller gatherings
- Events such as the Wine Stroll should have the event, but stagger the times to allow less people
- Consider venues such as the Sports Center for events and wine tastings, and other restaurant events, etc.
- Have restaurants work with local wineries (this has been in the works)
- VMH's role should be prepared to have messaging and plan for when the economy opens up again
- Consider having a bike party Downtown
- Consider using Villa Miramonte Park as a venue (is considered part of Morgan Hill Historic Society)

Manufacturing Roundtable:

- [SFMade](#) & [Manex](#):
 - SFMade is gathering best practices from larger manufacturers and is in the process of developing a best practice book
 - More training will be needed in forecasting for manufacturers
 - Challenge in supply chains will need to be addressed

ATTACHMENT 1

- Many Manufacturers are shifting their services during COVID-19. For example, textile companies are making masks, some are making face shields and alcohol distilleries are making hand sanitizers, food industry are shifting to consumer package goods
- Manufacturers will face both issues in the scaling back of their operations and the scaling up
- Workforce training will be required around maintaining the new social distancing norms
- [National Association of Manufacturers](#) published new guidelines
- MEP- [Impact Washington](#) is a good resource for guidelines
- Leadership and Communication training will be needed at all levels
- **Paramit**
 - Demand for personal dialysis machines are up
 - Hiring tech assemblers
 - Implemented daily employee health checks, hand sanitizers everywhere, office employees are working from home
 - Making their own masks
- **Sun Basket**
 - Buying masks for their own employees
 - Developed a communication piece early to help employees define what is considered “direct contact”
 - No truck drivers, visitors are allowed on premise unless it is an emergency
 - Working with Second Harvest Food
 - Working with “Feed it Forward” to donate meals to hospitals in NY and NJ metro areas
 - Installed a camera system called Fortric that provided thermal imaging fast to track employee temperatures

Communication Resources Round Table:

- Messaging
 - Imaging matters remember to portray a “safe” image that has a social distancing visual
 - Medium matters
 - Use [Google Analytics](#)
- Top suggestions for COVID-19 Strategy
 - Website- Make your customers aware that you’ve update your website to include new COVID-19 protocol
 - Create a resource page
 - Re-imagine how you sell – consider online
 - Email list- brief message out to your customers on what your promoting/selling
 - Describe how your company is taking safety precautions
 - Chose joy & promote positivity
- Social Media Channels
 - Do not post photos with a lot of people
 - Important to develop a brand

ATTACHMENT 1

- Consistency is key
- Business Development
 - Evaluate your brand position
 - Update your website
 - Invest in training and updating workforce
- [Facebook](#) is best social media platform to use. User base is higher
- Know your audience. [Instagram](#) is better for younger audiences
- Good to use [Google Analytics](#)
- [Wix.com](#) and [SquareSpace](#) are easy to use to create website platforms
- [Google Trends](#) is a good way to check what is trending on the internet
- Branding: How do you distinguish your company
 - Walmart vs. Target are good examples of different branding
- How to increase your followers
 - Follow others that follow you
 - Comment and respond to likes and questions
 - Double tap on Instagram

Business Assistance

- Non-profits can apply to both [Paycheck Protection Program](#) (PPP) and [Economic Injury Disaster Loan \(EIDL\) and Advance Loans](#)
- [Morgan Hill Grow Funds](#) requires a business owner to be a citizen or a permanent resident
- There are alternative vendors that accept I-10's, call Dennis King at SBDC
- Hairstylist can apply as sole proprietors to EIDL loans
- Main Street Program is for larger companies with 500 or more employees. This program is in the works.
- Make sure that you connect with your bank if you are applying to EIDL loans or any loan. The unsurmountable increase of traffic has caused glitches in the system.
- LLC businesses can apply for the EIDL Advance Loan

IDEAS FOR MORGAN HILL COVID-19 ECONOMIC RECOVERY STRATEGIES

		FUNDING	RESTAURANTS	DOWNTOWN	RETAIL	SMALL BUSINESS	TOURISM	MANUFACTURING	HEALTHCARE	TELCO
Business Outreach										
1	Parklets	\$	X	X	X	X	X			
2	Monterey Road Improvements (Road Diet)	\$	X	X	X	X	X			
3	Alcohol To-Go*		X	X		X	X			
4	Review Curbside Pickup & Drive-Thru Policies		X	X	X	X	X	X		
5	Temporary Art Installations	\$	X	X	X	X	X			
6	Window Activation	\$	X	X	X	X	X			
7	Pop Up Retail Opportunities		X	X	X	X	X			
8	Event Programming/Activation	\$	X	X	X	X	X			
9	Home Delivery of All Goods*		X	X	X	X		X		
10	Small Business Support Through MHCC		X		X	X		X		
11	Small Business and Downtown Support Through MHDA		X	X	X	X	X			
12	Buy Local Campaign	\$	X	X	X	X	X			
13	Co-Promote		X	X	X	X	X	X	X	
14	Bundle Media Buys	\$	X	X	X	X	X	X	X	
15	Maximize Use of Channel 17		X	X	X	X	X	X	X	
16	Partner Non-Profits with Businesses		X	X	X	X	X	X	X	
17	Promote Regional Hire Program		X	X	X	X	X	X	X	
Development Outreach										
18	Explore Private Development Placemaking Opportunities			X			X			
19	Outreach to Existing Developers			X	X			X	X	
20	Review Landscaping Policies for Placebranding			X			X			
Technical and Financial Resources										
21	Develop Economic Recovery Task Force		X	X	X	X	X	X		
22	Develop Re-Opening Guidance Handbook		X	X	X	X	X	X	X	
23	Identify Business Support Programs (Finance Agreements)		X		X			X	X	
23	Explore Small Business Loans/Grants	\$	X	X	X	X	X			
24	Review City Policies (CUPs, PDs, Sign Ordinance, Sidewalk Cafes)		X	X	X	X	X			
25	Evaluate Impact Fee Freeze Program		X		X	X		X	X	
26	Enhanced Technical Support Through SBDC	\$	X	X	X	X	X	X		
27	Promote Clear Business Policies		X	X	X	X	X	X	X	
28	Comprehensive Preliminary City Review		X	X	X	X	X	X	X	X
29	Review Voluntary Fee to Enhance Wi-Fi		X	X	X	X	X	X	X	X
30	Use City's Telco Contract to Expand Services to Community	\$	X	X	X	X	X	X	X	X
31	Require New Development to invest in Telco Infrastructure		X	X	X	X	X	X	X	X
Miscellaneous										
32	Reinforce Economic Blueprint Goals		X	X	X	X	X	X	X	X
33	Re-Evaluate Economic Blueprint	\$	X	X	X	X	X	X	X	X
34	Support Lodging and Tourism Industry Through VMH & SCWA		X	X	X	X	X			
35	Complete VMH Strategic Plan		X	X	X	X	X			
36	Enhance VMH Branding Campaign	\$	X	X	X	X	X			
37	Develop a City Place Branding/Placemaking Program	\$	X	X	X	X	X	X	X	

*Legislative Advocacy - Not City's Control



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, May 20, 2020 7:00 p.m.

Virtual Meeting

Link to join the meeting can be found below, Morgan Hill, CA 95037

AMENDED AGENDA

Please note that this agenda has been amended to add a proclamation.

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order 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. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/052020CityCouncilMtg> or by calling in to: (669) 900-9128, then enter the meeting id: 945 3961 4854.

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.

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

PROCLAMATIONS

PROCLAIMING THE WEEK OF MAY 17-23, 2020 AS PUBLIC WORKS WEEK

PROCLAIMING THE MONTH OF MAY 2020 AS EHLERS-DANLOS SYNDROME AND
HYPERMOBILITY SPECTRUM DISORDER
AWARENESS MONTH

PROCLAIMING THE MONTH OF MAY 2020 AS OLDER AMERICANS MONTH: MAKE YOUR
MARK

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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)

PUBLIC COMMENT SUPPLEMENTS

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

Recommendation:

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

2. APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

3. APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

Recommendation:

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

4. APPROVE THE MAY 6, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

5. CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

Recommendation:

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

Estimated Time: 90 Minutes

6. REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

Recommendation:

Review and provide direction on the Economic Development Business Recovery Work Program.

Estimated Time: 75 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 17000 Monterey Road

Agency Negotiators: Christina Turner, Chris Ghione

Negotiating Parties: Gavilan Community College District, City of Morgan Hill

Under Negotiation: Price and Terms of Payment for Lease

CLOSED SESSION ANNOUNCEMENT

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 OF MORGAN HILL

PROCLAMATION

of the City of Morgan Hill

Proclaiming

May 2020

as

Ehlers-Danlos Syndrome and Hypermobility Spectrum Disorder Awareness Month

- WHEREAS,** Ehlers-Danlos syndromes (EDS) are a group of disorders that affect the body's connective tissues including the skin, joints, blood vessels, gut, and many other organs and tissues; and
- WHEREAS,** EDS affects more than one in 5,000 people, and both males and females of every age and race. It is a chronic, life-long condition; and
- WHEREAS,** Hypermobility Spectrum Disorder (HSD) is diagnosed when the musculoskeletal complications of joint hypermobility and joint instability (ease of injury, joint pain, and dislocations for example) arise in a person who does not have the defining features of an underlying syndrome such as EDS or other heritable disorders of connective tissue; and
- WHEREAS,** in addition, several related disorders are observed in a number of people with EDS and with HSD. These add complexity to the presentation of their condition and its management; and
- WHEREAS,** a network of EDS and HSD support groups can help connect those managing life with these conditions as well as better informing the health care community and the public; and
- WHEREAS,** early and accurate diagnosis can provide the opportunity to create life-saving medical plans and improve quality of life; and
- WHEREAS,** there is currently no treatment for the Ehlers-Danlos Syndromes and no known cure; and
- WHEREAS,** further medical research and awareness can bring hope for treatment and a cure.

NOW, THEREFORE, BE IT RESOLVED, I, Rich Constantine, Mayor of the City of Morgan Hill, on behalf of the City Council and all residents, do hereby proclaim May 2020 as Ehlers-Danlos Syndromes and Hypermobility Spectrum Disorder Awareness Month

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 20th day of May 2020.

Rich Constantine, Mayor



CITY OF MORGAN HILL

PROCLAMATION

of the City of Morgan Hill

Proclaiming

May 2020

as

Older America's Month: Make Your Mark

WHEREAS, around the nation, older adults make their marks every day as volunteers, employees, employers, parents, grandparents, mentors, and advocates. They offer their time, talents, and experience to the benefit of our communities; and

WHEREAS, for 57 years, Older Americans Month (OAM) has been a special time to recognize these contributions. This year's OAM theme, *Make Your Mark*, highlights older adults' unique and lasting contributions to their communities—everything from sharing a story with grandchildren to leaving a legacy of community action; and

WHEREAS, communities that support and include all their members are stronger! Please join the City of Morgan Hill in strengthening our community.

NOW, THEREFORE, BE IT RESOLVED, I, Rich Constantine, Mayor of the City of Morgan Hill, on behalf of the City Council and all residents, do hereby proclaim May 2020 to be **Older Americans Month: Make Your Mark**. We urge every resident to take time during this month to recognize older adults and the people who serve them as valuable members of our community.

If you are interested in getting involved once the shelter in place is lifted please contact Denise Melroy at denise.melroy@mhcr.com.

Centennial Recreation Senior Center <https://www.facebook.com/morganhillseniors>.

Need OAM resources or want to learn more? Visit the official website, acl.gov/oam, and follow ACL on [Twitter](#) and [Facebook](#).

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 20th day of May 2020.

Rich Constantine, Mayor



CITY OF MORGAN HILL

PROCLAMATION
of the City of Morgan Hill
Proclaiming
Week of May 17th to 23rd, 2020
as
Public Works Week

WHEREAS, The Public Works Department keeps our community fully functioning through a broad range of services such as infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of Morgan Hill; and

WHEREAS, These infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers and employees from state and local governments and the private sector, who are responsible for rebuilding, improving and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our residents; and

WHEREAS, It is in the public interest for the residents, civic leaders and children in the City of Morgan Hill to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and

WHEREAS, the American Public Works Association has celebrated the annual National Public Works Week since 1960.

NOW, THEREFORE BE IT RESOLVED, I, Rich Constantine, Mayor of the City of Morgan Hill on behalf of the City Council and all residents, do hereby proclaim the week May 17-23, 2020 as National Public Works Week. National Public Works Week allows an opportunity to recognize and thank all our Public Works teammates for the work they do to improve our City's infrastructure. These essential services are especially important during challenging times like Covid-19.

In witness whereof, I have hereunto set my hand and cause the Seal of the City of Morgan Hill to be affixed this 20th day of May 2020.

Rich Constantine, Mayor

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: supplement for 5-20-20 meeting
Date: Thursday, May 7, 2020 9:29:01 AM
Attachments: [2020-04-29.docx](#)

Michelle Bigelow, MMC, CPMC

Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill

City Clerk's Office

17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259

michelle.bigelow@morganhill.ca.gov

morganhill.ca.gov | [facebook](#) | [twitter](#)

From: John Lang <John.Lang@morganhill.ca.gov>
Sent: Thursday, May 7, 2020 9:23 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

For next public comment

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Thursday, May 07, 2020 9:19 AM
To: Barry Holtzclaw <bholtzclaw@newsvmmedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; Nathan Mixer <nmixter@newsvmmedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Tammy Brownlow <president@gilroyedc.org>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor-supervisor@gmail.com>; supervisors@cosb.us; Sally <rebtruck@razzolink.com>; 'Pat Loe' <donpatloe@att.net>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; shawna freels <shawna.freels@ci.gilroy.ca.us>; Robert T. Dillon <rtdillon@garlic.com>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Editor, Gilroy Dispatch, Hollister Freelance and Morgan Hill Times,
Please publish Jon Coupal's Article as a Guest Editorial so that your readers will know how taxpayers feel about being shafted by boondoggle transit fiascoes, and higher gas & diesel taxes to subsidize bankrupt-from-conception public sector transit. We could save billions, and lower local government budget deficits if we privatized transit. Have all transit riders take Uber, Lyft, shuttles, taxis, and pay their fares, and we'd save big bucks. We cannot afford wasteful public sector transit, when we could have much more transportation for much less money,

less fraud, less waste, and less abusive governance by unelected "directors" at joint power authorities that nobody ever voted for. If local elected Supervisors and Councilmembers cared for taxpayers, then they'd end the fraud, waste and abuse at the transit agencies, and that goes double for CAHSRA's Bullet-in-the-Brain Train.

Joseph P. Thompson, Esq.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

cc: PUBLIC COMMENT: NEXT MEETING: VIRTUAL, REAL, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"

----- Forwarded Message -----

From: Jon Coupal <jon@hjta.org>

To: 'Joseph Patrick Thompson' <translaw@pacbell.net>

Sent: Monday, May 4, 2020, 09:54:47 AM PDT

Subject: RE: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]

Sent: Monday, May 04, 2020 9:08 AM

To: Jon Coupal <jon@hjta.org>

Subject: Re: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon,

Please send me a copy of your Article and I'll send it to my State Senator.

Joe Thompson

(408) 607-7351 cell phone

Napa

On Saturday, May 2, 2020, 06:23:21 AM PDT, Jon Coupal <jon@hjta.org> wrote:

Wait until you see my column on Monday.

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]
Sent: Friday, May 01, 2020 2:29 PM
To: Jon Coupal <jon@hjta.org>; Senator Dodd <senator.dodd@senate.ca.gov>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Jon, and Senator Dodd,

We didn't vote for HSR like CAHSRA is cramming down our throats. We don't want it. Motorists cannot afford to pay more gas taxes for the subsidies it requires. We could have HSR without taxpayers paying a dime, if we put enough UPS, Fedex and Postal Service tonnage aboard HSR. But HSRC and then HSRA never listened to this private sector transport idea. They mistakenly believe that California's taxpayers have endless money.

Joe Thompson

(408) 607---7351 cell phone

----- Forwarded Message -----

From: HSR san.jose_merced@HSR <san.jose_merced@hsr.ca.gov>

To: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Friday, May 1, 2020, 10:59:27 AM PDT

Subject: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

[Automatic Reply]

Thank you for taking the time to contact the California High-Speed Rail Authority. Your views and comments are important to our team. We receive a large amount of letters, phone calls and emails, and because this email is not monitored 24 hours a day and generally not on the weekends, we may not be able to respond to you right away. However, our team works very hard to ensure that all comments/questions are read and responded to, when appropriate.

If you have any questions about working at the Authority, please visit our High-Speed Rail Careers page here: <http://hsr.ca.gov/About/Careers/index.html>.

Thank you again for your interest in the California High-Speed Rail Program.

[California High-Speed Rail Authority](#)



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NUCLEAR POWERED AIRCRAFT AND HIGH SPEED RAIL

Jon Coupal

A long forgotten aspect of the nuclear arms race was the costly undertaking by the United States to develop a nuclear powered aircraft as a strategic bomber.

Even before Allied powers defeated Nazi Germany in 1945, both the United States and the Soviet Union were battling for post-war superiority. With the successful detonation of two atomic bombs – bringing the Pacific Theater hostilities to an abrupt halt – the U.S. had a brief period of nuclear superiority over the USSR.

That would not last long as the USSR quickly accelerated its nuclear program and the Cold War was on.

In May 1946, the United States Army Air Forces started the Nuclear Energy for the Propulsion of Aircraft (NEPA) project. The alluring idea was to build an aircraft that could, in theory, stay aloft indefinitely. In 1951, the NEPA project was succeeded by the Aircraft Nuclear Propulsion (ANP) program.

However, despite the efforts of America's best nuclear and aviation scientists working with a virtually unlimited budget, the problems were insurmountable. The biggest hurdle was that nuclear reactors are very heavy. Sustaining one aloft with a fixed-wing aircraft turned out to be a challenge that could only be overcome by using a modified B-26 as a platform.

Reducing the weight of the reactors by shielding them with lighter material put the flight crews in danger from the high risk of radiation exposure. This latter problem never worried the Soviets in that their similar programs were willing to so expose the crews. But this led to an unacceptable mortality rate, even for the Russians.

After more than a decade of throwing good dollars after bad, the aircraft nuclear propulsion programs were substantially terminated by President John F. Kennedy in 1961.

The lessons of history should be instructive for Californians, who have watched for more than a decade as the state has thrown their money into the increasingly impossible high-speed rail program.

Even before the California High-Speed Rail bond proposal appeared on the ballot in November 2008, the Howard Jarvis Taxpayers Association commissioned a study in conjunction with the Reason Foundation because of deep concerns about the project's viability. The study, published in September 2008, warned:

"The CHSRA plans as currently proposed are likely to have very little relationship to what would eventually be built due to questionable ridership projections and cost assumptions, overly optimistic projections of ridership diversion from other modes of transport, insufficient attention to potential speed restrictions and safety issues and discounting of potential community or political opposition. Further, the system's environmental benefits have been grossly exaggerated, especially with respect to reduction of greenhouse gas emissions that have been associated with climate change."

Every negative prediction about the project came to be realized. Even initial advocates of the project, including a former chairman of the High Speed Rail Authority, have turned against the costly boondoggle.

At the end of 2018, California's own State Auditor issued a scathing report excoriating the project's mismanagement, waste and lack of transparency. Speed-readers needed to go no further than the subtitle to learn the conclusion: "Flawed Decision Making and Poor Contract Management Have Contributed to Billions in Cost Overruns and Delays in the System's Construction."

Nothing has improved since then, and much looks even worse.

In December of 2019, the Federal Railroad Administration objected to the California High-Speed Rail Authority's plan to issue a request for proposals to build train track and install electrical wiring and maintenance facilities. The FRA warned, "it is premature for CHSRA to undertake another major design-build contract." Disregarding the concerns, the rail authority went ahead the next day with its plan to issue the RFP.

In February, the Authority issued its latest two-year "business plan," which once again increased the projected cost and reported a further delay in completion. Color us shocked.

Soon after, a draft environmental document outlined the preferred route from Bakersfield to Palmdale, an engineering feat that would cost \$18.1 billion and

mow down a high school, a homeless shelter, a church, eight motels, 253 housing units, 311 businesses and 175 agricultural fields.

In March, the L.A. Times revealed that employees of the rail authority's top consultant had been ordered to hide bad news about the project.

There's no hiding it. The Legislative Analyst's Office concluded that the latest HSR business plan is not realistic, has significant funding challenges, is susceptible to further cost overruns and is inconsistent with voter intent because it relies on public subsidies.

In the 1960s, the President and Congress wisely pulled the plug on a failed project when it became obvious that all the money in the Pentagon couldn't make it fly. Until California's government wises up, we'll be stuck watching our taxpayer dollars fly out the window.

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: 5/20/20 public comment supplement
Date: Friday, May 15, 2020 3:56:32 PM
Attachments: [AGs Complaint against Uber & Lyft.pdf](#)

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Thursday, May 14, 2020 1:53 PM

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; Nathan Mixter <nmixter@newsymedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; shawna freels <shawna.freels@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rtdillon@garlic.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcdedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor-supervisor@gmail.com>; supervisors@cosb.us; 'Pat Loe' <donpatloe@att.net>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; cityclerk@hollister.ca.gov

Subject: LAWSUIT BY CALIFORNIA ATTORNEY GENERAL, SF, LA & SAN DIEGO, AGAINST UBER AND LYFT: ASSAULT ON SMALL BUSINESS IN CALIFORNIA

Dear Barry and Nathan,

At a time when California small business is under assault by the worldwide pandemic, that has cast our economy into the depths of a Great Depression, our State Attorney General and three big cities' attorneys sue small business owners in the transportation field. Already crucified, strangled and suffocated by governance abuses in California, and confiscatory taxes/fees, forced to subsidize government owned transport hemorrhaging red ink, transit agencies bankrupt-from-conception, capped-off by the Supermassive Black Hole Bullet Train, our government in California would snuff Californians trying to make a living. I thought we were to encourage small business? What hypocrites we are.

A few miles from my high school there were two garages where two sets of two young men started their small businesses:

Hewlett and Packard; and Jobs and Wozniak.

What would have happened if our government had snuffed-out those two small businesses started in garages in Cupertino and Los Altos?

AB-5 is contrary to the federal law signed by President Clinton, and carried in the House by Norm Mineta, later Secretary of Transportation.

So, do we want our law to encourage small business in transportation, as President Clinton and Norm Mineta wrote, or do we want to crush transport small business like AB-5 does in California?

History shows that the sounder public policy is to encourage, not kill-off, small business.

Caveat viator.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

**cc: PUBLIC COMMENT: NEXT MEETING, VIRTUAL OR REAL; REGULAR, SPECIAL, STUDY
SESSION, PUBLIC
WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-
CALLED
MOBILITY PARTNERSHIP**

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XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
SATOSHI YANAI, SBN 186355
Supervising Deputy Attorney General
MINSU D. LONGIARU, SBN 298599
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**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

[Plaintiff's Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

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1 Plaintiff, the People of the State of California (“People”), by and through Xavier Becerra,
2 Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara
3 W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring
4 this action against Uber Technologies, Inc. (“Uber”), Lyft, Inc. (“Lyft”), and Does one through
5 fifty (collectively “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010
8 and 2012, respectively, they made the calculated business decision to misclassify their on-demand
9 drivers as independent contractors rather than employees. Both companies continue to
10 misclassify their drivers—and have exploited hundreds of thousands of California workers—in
11 direct contravention of California law.

12 2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and
13 requirements that implement California’s strong public policy in favor of protecting workers and
14 promoting fundamental fairness for all Californians. This longstanding policy framework
15 includes a comprehensive set of safeguards and benefits established by the State of California
16 (“State”), cities, and counties, such as minimum wages, overtime premium pay, reimbursement
17 for business expenses, workers’ compensation coverage for on-the-job injuries, paid sick leave,
18 and wage replacement programs like disability insurance and paid family leave. Uber and Lyft
19 owe their drivers these benefits and protections.

20 3. Recognizing the serious problem of employee misclassification and the harms it
21 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
22 Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5
23 (2019-2020 Reg. Sess.) (“A.B. 5”).) A.B. 5 codified and extended the California Supreme
24 Court’s landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018)
25 4 Cal.5th 903, reh’g. denied (June 20, 2018) (“*Dynamex*”). California law is clear: for the full
26 range of protections afforded by California’s Wage Orders, Labor Code, and Unemployment
27 Insurance Code, workers are generally presumed to be employees unless the hiring entity can
28

1 overcome this presumption by establishing each of the three factors embodied in the strict “ABC”
2 test.

3 4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber
4 and Lyft are traditional employers of these misclassified employees. They hire and fire them.
5 They control which drivers have access to which possible assignments. They set driver quality
6 standards, monitor drivers for compliance with those standards, and discipline drivers for not
7 meeting them. They set the fares passengers can be charged and determine how much drivers are
8 paid.

9 5. Uber and Lyft are transportation companies in the business of selling rides to
10 customers, and their drivers are the employees who provide the rides they sell. The fact that Uber
11 and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their
12 fundamental rights as employees.

13 6. But rather than own up to their legal responsibilities, Uber and Lyft have worked
14 relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature
15 declined. They utilize driver contracts with mandatory arbitration and class action waiver
16 provisions to stymie private enforcement of drivers’ rights. And now, even amid a once-in-a-
17 century pandemic, they have gone to extraordinary lengths to convince the public that their
18 unlawful misclassification scheme is in the public interest. Both companies have launched an
19 aggressive public relations campaign in the hopes of enshrining their ability to mistreat their
20 workers, all while peddling the lie that driver flexibility and worker protections are somehow
21 legally incompatible.

22 7. Uber’s and Lyft’s motivation for breaking the law is simple: by misclassifying their
23 drivers, Uber and Lyft do not “bear any of [the] costs or responsibilities” of complying with the
24 law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches:
25 “Our business would be adversely affected if Drivers were classified as employees instead of
26 independent contractors.” (Uber Securities and Exchange Com. (“SEC”) S-1, p. 28 [Filing Date:
27 April 11, 2019].)
28

8. As one federal district judge recently observed: “[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature” (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) __ F.Supp.3d __ [2020 WL 16484151, at *2].)

9. The State’s laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding” businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to “assume responsibility” for “the ill effects to workers and their families” of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the “erosion of the middle class and the rise in income inequality.” (A.B. 5, § 1(c).)

10. The time has come for Uber's and Lyft's massive, unlawful employee misclassification schemes to end. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because:

(i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Xavier Becerra, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and Dennis J. Herrera, the San Francisco City Attorney (collectively referred to as “Plaintiff” or the “People”).

15. Xavier Becerra is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under A.B. 5. (Lab. Code, § 2750.3(j).)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California's UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

1 18. The San Francisco City Attorney, Dennis J. Herrera, has the statutory authority to
2 bring actions in the name of the People of the State of California to enforce California’s UCL. As
3 the City Attorney of a city and county, he also has the express statutory authority under A.B. 5 to
4 bring an action for injunctive relief to prevent the continued misclassification of employees.
5 (Lab. Code, § 2750.3(j).)

6 **II. DEFENDANTS**

7 19. Defendant Uber Technologies, Inc. is a California corporation with its principal place
8 of business in San Francisco, California.

9 20. Defendant Lyft, Inc. is a California corporation with its principal place of business in
10 San Francisco, California.

11 21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are
12 unknown to the People. The People are informed and believe, and on this basis, allege that each
13 of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well
14 as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter
15 collectively referred to as “DOES 1 through 50”), are legally responsible for the conduct alleged
16 herein. The names and identities of defendants DOES 1 through 50 are unknown to the People,
17 and when they are known the People will amend this Complaint to state their names and
18 identities.

19 **FACTUAL ALLEGATIONS**

20 **I. UNDER *DYNAMEX* AND A.B. 5, CALIFORNIA USES THE ABC TEST TO** 21 **DETERMINE EMPLOYEE STATUS.**

22 22. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903,
23 along with the passage of A.B. 5, which went into effect January 1 of this year, have established
24 that the ABC test governs the determination of whether a worker is properly classified as an
25 employee or independent contractor for purposes of the Labor Code, the Unemployment
26 Insurance Code, and the Wage Orders of the Industrial Welfare Commission (“I.W.C.”).

27 23. Under the ABC test, for a worker to be properly classified as an independent
28 contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

1 establishing that *all* of the following three conditions are satisfied: (A) the worker is free from
2 the control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact; (B) the worker performs work that
4 is outside the usual course of the hiring entity’s business; and (C) the worker is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as the
6 work performed. (Lab. Code, § 2750.3(a)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.)
7 These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

8 24. Because the hiring entity must establish all three parts of the ABC test in order to
9 lawfully classify a worker as an independent contractor, the hiring entity’s failure to satisfy any
10 one part of the ABC test results in the worker in question being classified as an employee rather
11 than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

12 **II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT**
13 **SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH**
14 **DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.**

15 25. For the purpose of this Complaint, “Drivers” refers to individuals who fall into one or
16 both of the following two categories. *First Category:* All individuals who have driven for Uber
17 as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed
18 up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual
19 name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary
20 directly under their individual name or with a fictional/corporate name for their services as ride-
21 hailing drivers. *Second Category:* All individuals who have driven for Lyft as ride-hailing
22 drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive
23 directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with
24 a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their
25 individual name or with a fictional/corporate name for their services as ride-hailing drivers.
26 “Passengers” refer to individuals who receive Uber and/or Lyft ride-hailing services through such
27 Drivers.

28 26. Each Defendant operates a ride-hailing transportation service in which Passengers
may request and pay for on-demand rides from either Defendant by using that Defendant’s

1 smartphone application (the “Uber App,” the “Lyft App,” “App” or “Defendant’s App”
2 respectively, and collectively, “Apps” or “Defendants’ Apps”).

3 27. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the
4 State of California to provide on-demand rides throughout the State to Passengers who book such
5 rides through either Defendant’s App.

6 28. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed
7 its name to Lyft, and subsequently sold the “Zimride” component of its business (a long-distance
8 carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a
9 market capitalization of approximately \$13 billion.

10 29. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had
11 a market capitalization of approximately \$53 billion.

12 30. Among the various ride-hailing options offered by Defendants, by far the largest is an
13 option in which individuals with non-commercial drivers’ licenses provide on-demand rides to
14 Passengers via each Defendant’s App using ordinary passenger vehicles. Lyft refers to this on-
15 demand option as a “Lyft.” Uber refers to this option as “UberX.”

16 **III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS**
17 **DRIVERS.**

18 31. Since first launching their ride-hailing services, each Defendant has misclassified, and
19 continues to misclassify, its Drivers as independent contractors instead of employees.

20 32. Each Defendant requires its Drivers, as a pre-condition of providing rides through
21 Defendant’s App, to agree to standard-form contracts and addenda. Each Defendant’s contracts
22 and addenda contain standardized terms and conditions that each Defendant sets regarding its
23 Drivers’ work. Each Defendant’s contracts and addenda also contain boilerplate language
24 unilaterally designating each Defendant’s Drivers as independent contractors.

25 **A. Part A of the ABC Test (“control and direction”)**

26 33. Each Defendant retains all necessary control over its Drivers’ work, which is to
27 transport Passengers from point A to point B in a car.
28

1 34. Each Defendant's App, in combination with each Defendant's policies, functions like
2 an algorithmic manager that effectively supervises its Drivers like a human manager.

3 35. Each Defendant determines what Drivers are eligible to provide ride-hailing services
4 on its App and can change its Driver standards in its discretion.

5 36. Each Defendant dictates the types of cars its Drivers may use on its app, as well as the
6 standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its
7 discretion.

8 37. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant
9 retains the right to terminate or pause a Driver's tenure at any time in accordance with terms,
10 conditions, and policies that each Defendant sets in its discretion.

11 38. Each Defendant sets the fares that Passengers pay for rides received through its App.

12 39. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

13 40. Each Defendant sets the amount of compensation that it pays its Drivers for providing
14 ride-hailing services to Passengers on its App.

15 41. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of
16 complaints that arise from its Drivers and Passengers.

17 42. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion,
18 ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost
19 items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of
20 compensation for ride-hailing services provided through the App.

21 43. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six
22 hours if the Driver reaches a twelve-hour driving limit.

23 44. Each Defendant does not freely permit its Drivers to choose their routes. For
24 example, if a Passenger complains to a Defendant about the route used by a Driver, each
25 Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient
26 route.

1 45. Each Defendant provides its Drivers with their work and pay by controlling the
2 dispatch of individual Passengers to individual Drivers through each Defendant's App. Each
3 Defendant's App controls which Drivers receive which ride requests and when.

4 46. Each Defendant controls and limits the information available to its Drivers and
5 Passengers through each Defendant's App, which each Defendant may change at any time
6 without notice.

7 47. When a Passenger requests an on-demand ride through Defendant's App, the App
8 shows and matches that Passenger with only one Driver at a time, regardless of the number of
9 nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App
10 shows and matches that Driver with only one Passenger at a time, regardless of the number of
11 nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on-
12 demand ride. Instead, they are selectively steered to one another through the centralized direction
13 of the App.

14 48. Each Defendant's App hides from its Passengers key information about its Drivers'
15 experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their
16 earnings in the way a true independent contractor or entrepreneur typically would.

17 49. Each Defendant's App allows its Drivers only approximately fifteen seconds to
18 accept or reject a trip request.

19 50. Drivers for each Defendant who consistently do not accept or reject trip requests
20 within the fifteen-second time limit may be temporarily logged out from each Defendant's App.
21 The length of this bar is within each Defendant's discretion.

22 51. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the
23 respective Defendant through its App of the Driver's trip status at every key step of the on-
24 demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of
25 the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to
26 constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

27 52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride
28 experience from which each Defendant derives its brand recognition, reputation, and value.

1 These rules, which each Defendant bills as “suggestions” or “tips,” cover matters such as music,
2 how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

3 53. Each Defendant retains the right to suspend or terminate its Drivers, or to cease
4 dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way
5 that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard.
6 These Driver behaviors can include, among other infractions, canceling too many rides, not
7 maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant
8 deems inefficient.

9 54. Each Defendant monitors, and ultimately controls, its Drivers through feedback it
10 solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its
11 Drivers’ performance. Each Defendant’s App solicits feedback and prompts its Drivers and
12 Passengers to rate one another from one to five stars for each Defendant’s benefit, as each
13 Defendant uses the ratings for its own discipline of Drivers.

14 55. Each Defendant determines the type of data and feedback its Drivers and Passengers
15 may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers
16 may provide feedback through its App.

17 56. Each Defendant uses information from its Passenger ratings to make decisions about
18 disciplining or terminating its Drivers. If the average rating of a Defendant’s Driver falls below a
19 certain threshold set by Defendant, Defendant may suspend or terminate that Driver from
20 providing ride-hailing services on Defendant’s App.

21 57. Each Defendant frequently experiments with software features that directly impact its
22 Drivers, creating an environment in which Drivers are subject to ever-shifting working
23 conditions, all determined in each Defendant’s discretion. According to Lyft, “We frequently test
24 driver incentives on subsets of existing drivers and potential drivers, and these incentives . . .
25 could have other unintended adverse consequences.” (See Lyft SEC 10-K, p. 20 [Filing Date:
26 February 28, 2020].) According to Uber, “[t]here are over 1,000 experiments running on our
27 platform at any given time.” (Deb et al., Under the Hood of Uber’s Experimentation Platform
28 (Aug. 28, 2018), <<https://eng.uber.com/xp/>> (as of May 1, 2020).)

1 58. Each Defendant introduces and then takes away features from its App in accordance
2 with its own business decisions. Each Defendant exerts control over its App, and thereby over its
3 Drivers.

4 **B. Part B of the ABC Test (“usual course of business”)**

5 59. Each Defendant’s Drivers are engaged in work that is within the usual course of each
6 Defendant’s business: the provision of on-demand rides. Each Defendant is a transportation
7 company that sells on-demand rides to its customers, i.e., its Passengers, who book and pay for
8 such rides through the Defendant’s App.

9 60. Drivers provide the on-demand ride. They are an integrated and essential part of each
10 Defendant’s transportation business. The immediate availability and temporal convenience of an
11 on-demand ride is the service that each Defendant sells to its Passengers.

12 61. Each Defendant publicly holds itself out to the public as a transportation company in
13 the business of selling on-demand rides.

14 62. Lyft has trademarked the slogan, “Your Friend with a Car.” Lyft advertises: “Get a
15 Ride Whenever You Need One”; “A ride in minutes”; and “Our drivers are always nearby so you
16 can get picked up, on demand, in minutes.”

17 63. Uber has trademarked the slogan, “Everyone’s Private Driver.” Uber advertises: “We
18 built Uber to deliver rides at the touch of a button”; “Always the ride you want”; “Request a ride,
19 hop in, and go”; “Sign up to ride. Rides on demand”; and “Get a reliable ride in minutes, at any
20 time and on any day of the year.”

21 64. Each Defendant represents to Passengers that it prescribes the qualifications of
22 Drivers on its App, as well as standards for Drivers’ quality of services. Each Defendant bills its
23 Passengers directly for the entire amount of the on-demand ride, and each Defendant’s Passengers
24 pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with
25 the quality of the on-demand ride provided through Defendant’s App, they report that problem to
26 Defendant, and Defendant may refund or cancel the Passenger’s fare.

27 65. Each Defendant is financially integrated with and dependent on its Drivers. Each
28 Defendant only generates income for its ride-hailing business if its Drivers transport and provide

rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

66. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

67. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on-demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

68. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

1 further improve the rider experience.” (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019],
2 emphasis added.) The prospectus identifies a “key factor” affecting Lyft’s performance as
3 “*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace.”
4 (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft’s
5 business model, “Why Lyft Wins,” Lyft’s IPO prospectus definitively answers: because Lyft is
6 “Driver-Centric.” (Id., at p. 3.)

7 70. Uber’s prospectus for its 2019 IPO also describes how Drivers, and the labor they
8 furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not
9 mince words: “If we are unable to attract or maintain a critical mass of Drivers . . . our platform
10 will become less appealing to platform users, *and our financial results would be adversely*
11 *impacted* Any decline in the number of Drivers . . . using our platform *would reduce the*
12 *value of our network and would harm our future operating results.*” (See Uber SEC S-1, *supra*,
13 at pp. 29-30, emphasis added.) Uber’s business model begins and ends with its Drivers.

14 **C. Part C of the ABC Test (“independently established trade, occupation, or**
15 **business”)**

16 71. Each Defendant’s Drivers are not engaged in an independently established trade,
17 occupation, or business of the same nature as the work they perform for each Defendant. Driving
18 itself is not a distinct trade, occupation, or business.

19 72. When driving for each Defendant, Drivers are not engaged in their own transportation
20 business, but are instead driving Passengers and generating income for the respective Defendant.

21 73. There are no specialized skills or training necessary to drive passengers on a ride-
22 hailing service. Consequently, each Defendant permits Drivers without any such skills or training
23 to provide on-demand rides on its App. For example, both of Defendant’s largest ride-hailing
24 options, “Lyft” and “UberX,” permit Drivers to offer ride-hailing services with an ordinary
25 driver’s license and a personal vehicle.

26 74. Each Defendant provides its Drivers with a necessary tool and instrumentality to
27 perform their on-demand, ride-hailing services—its App.

1 75. Each Defendant's App is the exclusive means by which Passengers and Drivers can
2 connect to, request, and provide each Defendant's on-demand rides.

3 76. Each Defendant's Drivers generally invest little to no capital to drive for each
4 Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a
5 smartphone and a car.

6 77. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents
7 its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running
8 their own independent businesses.

9 78. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers'
10 earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate
11 of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and
12 advertising of each Defendant's brand.

13 79. The limited economic levers that each Defendant leaves to its Drivers, such as
14 whether to drive at busier times or for more hours, are not consistent with the level of decision-
15 making normally exercised by entrepreneurs or those operating their own independent businesses.

16 80. Each Defendant limits its Drivers' ability to freely decline and cancel rides that
17 Drivers think will be unprofitable.

18 81. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus
19 to gauge their potential earnings based on demand for their services.

20 82. Each Defendant limits its Drivers' ability to share their accounts with other Drivers,
21 thereby curtailing its Drivers' ability to individually expand their business offerings.

22 83. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting
23 the ability of its Drivers to market themselves independently for repeat rides outside of
24 Defendant's App.

25 84. Each Defendant limits its Drivers' ability to take advantage of its App's financial
26 incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it
27 invites to participate in various, time-limited financial incentives that, for example, reward
28 Drivers for driving longer, or for driving at certain times and places. These financial incentives

1 are targeted to individual Drivers based on each Defendant’s own opaque criteria as implemented
2 by the algorithmic decision-making engines in its App. By selecting which Drivers will be
3 invited to participate in which financial incentives and on what individualized terms, each
4 Defendant, in effect, chooses which Drivers are financial “winners” and “losers.” Each
5 Defendant as the employer, not the Driver as an “entrepreneur,” determines the Driver’s earnings.

6 85. Each Defendant controls its Drivers’ ability to earn compensation via its App, making
7 trade-offs between its Drivers’ earnings and the price each Defendant charges to Passengers to the
8 benefit of each Defendant’s profit.

9 86. Lyft describes these trade-offs in its 2019 annual SEC report reporting that “changes”
10 made by Lyft “may be viewed positively from one group’s perspective (such as riders)” and
11 “negatively from another’s perspective such as (drivers).” (See Lyft SEC 10-K, *supra*, at p. 24.)

12 87. Uber’s SEC filings describe how the “greatest impact” on Uber’s Take Rate (the
13 company’s “take” on the difference between the Passenger’s fare on a ride and what the ride-
14 hailing company pays out to the Driver) has “historically” come through Uber’s unilateral
15 “adjustments to Driver incentives.” (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO
16 prospectus, Uber freely admits the control it exerts over its Drivers’ earnings—and the fact that
17 Uber’s own profit comes at its Drivers’ expense: “[A]s we aim to reduce Driver incentives to
18 improve our financial performance, we expect Driver dissatisfaction will generally increase.”
19 (*Id.*, at p. 30.)

20 **IV. DEFENDANTS’ UNLAWFUL MISCLASSIFICATION OF DRIVERS** 21 **RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.**

22 88. It is evident that neither Uber nor Lyft can meet their burden of showing that their
23 Drivers are independent contractors under California’s ABC test for misclassification as adopted
24 in *Dynamex*, *supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test,
25 Defendants exercise control over their Drivers through their Apps, which, in combination with
26 their policies, function like algorithmic managers that effectively supervise Defendants’ Drivers
27 like human managers. Under Part B of the ABC test, Drivers perform services within
28

1 Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC
2 test, Defendants cannot show that Drivers have established independent businesses.

3 89. Uber claims that “Drivers are at the heart of our service” and Lyft claims that Drivers
4 are “what makes Lyft ... Lyft.” But by misclassifying their Drivers, Defendants have devised an
5 unlawful business model that denies these very same Drivers the protections and benefits they
6 have rightfully earned as employees, and thereby gained an unlawful and unfair competitive
7 advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers,
8 undermines law-abiding competitors, evades Defendants' responsibility to contribute their share
9 as employers into the State's social insurance programs, and harms taxpayers who are often called
10 upon to address the negative consequences to Drivers and their families of Defendants'
11 exploitative employment practices.

12 **A. Defendants' unlawful misclassification deprives Drivers of their rights as**
13 **employees.**

14 90. Defendants' misclassification of their Driver workforce has allowed Defendants to
15 gain an unlawful competitive advantage over their competitors by circumventing the protections
16 and benefits that the law requires employers to provide to their employees. The laws violated by
17 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
18 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
19 benefits, and social insurance programs.

20 **1. Minimum Wages**

21 91. The law requires Drivers to be paid the applicable state or local minimum wage for
22 each hour worked, regardless of the compensation formula or method.

23 92. Defendants do not guarantee their Drivers a minimum wage under state and local
24 laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance
25 of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic
26 pricing pay surges, base rates, and minimum fares.

27 93. Defendants do not pay their Drivers for all their hours worked. Examples where each
28 Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

1 cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to
2 and returning from rides, and time spent logged on and monitoring each Defendant's App for ride
3 requests. Defendants cannot provide on-demand rides without the performance of these tasks.

4 94. Defendants have failed—and continue to fail—to meet their minimum wage
5 obligations with respect to their Drivers, including hours that are entirely unpaid and hours that
6 are paid at less than the applicable minimum wage.

7 **2. Overtime Wages**

8 95. The law requires Drivers to be paid the applicable overtime rate of pay—one-and-
9 one-half times or two times the Drivers' regular rate of pay—for all hours worked in excess of
10 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
11 seventh consecutive day of work in a workweek.

12 96. Defendants do not pay their Drivers overtime as required by law, despite the fact that
13 Drivers working overtime help Defendants to ensure the steady and constant supply of rides on
14 which Defendants' businesses depend.

15 97. Defendants have failed—and continue to fail—to meet these overtime pay obligations
16 with respect to their Drivers.

17 **3. Business Expenses**

18 98. The law requires Drivers to be paid or reimbursed for the necessary expenses in
19 performing their work.

20 99. Drivers pay for business expenses they incur in the course and scope of performing
21 their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear,
22 registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated
23 with using Defendants' Apps.

24 100. These expenses are substantial. For example, the Internal Revenue Service publishes
25 a "standard mileage rate," which currently estimates the cost of operating a vehicle for business
26 purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their
27 vehicles, without any reimbursement for this significant, work-related expense.
28

1 101. Defendants impose all the costs of operating the vehicles necessary to perform their
2 ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business
3 without them.

4 102. Defendants have failed—and continue to fail—to meet these expense reimbursement
5 obligations with respect to their Drivers.

6 **4. Meal and Rest Periods**

7 103. The law requires Drivers to be provided with one 30-minute duty-free meal period for
8 a work period of more than five hours, and a second 30-minute duty-free meal period for a work
9 period more than ten hours. The law further requires Drivers to be provided a ten-minute, paid,
10 off-duty rest period for every four hours worked, or major fraction thereof. Authorized or
11 required rest period time shall be counted as paid time worked.

12 104. Defendants do not provide for off-duty meal periods and do not authorize or permit
13 paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the
14 employee's regular rate of compensation for each failure, as required by law.

15 105. Defendants have failed—and continue to fail—to meet these meal and rest period
16 obligations with respect to their Drivers.

17 **5. Wage Statements**

18 106. The law requires Drivers to receive regular and complete itemized wage statements
19 from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly
20 wages, piece rate wages, rest period pay, and nonproductive time pay.

21 107. Defendants do not provide Drivers with itemized wage statements in conformance
22 with California law.

23 108. Defendants have failed—and continue to fail—to meet these wage statement
24 obligations with respect to their Drivers.

25 **6. Paid Sick Leave and Health Benefits**

26 109. The law requires Drivers to be provided paid sick leave benefits as specified under
27 California law and various local laws, including, but not limited to, the Los Angeles, San Diego,
28 and San Francisco sick leave ordinances.

1 110. The law currently requires Drivers in San Francisco to receive health care
2 expenditures of \$3.08 per hour. In recent years the rate has ranged between \$2.53 and \$3.08 per
3 hour.

4 111. Drivers do not accrue the paid sick leave benefits or receive the health care
5 expenditures from Defendants that employers are required to provide under state and local law.

6 112. Defendants have failed—and continue to fail—to meet these sick leave and health
7 care expenditure obligations with respect to their Drivers.

8 **7. Social Insurance Programs**

9 113. The law requires Defendants to remit contributions or take other mandatory actions
10 under the State’s social insurance programs, including, but not limited to, unemployment
11 insurance, disability insurance, paid family leave, workers’ compensation, and San Francisco’s
12 Paid Parental Leave Ordinance.

13 114. These programs are intended to provide wage replacement and other benefits in the
14 event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to
15 care for a family member, or is otherwise unable to work.

16 115. Defendants have failed—and continue to fail—to meet these social insurance
17 program obligations with respect to their Drivers.

18 **B. Defendants’ unlawful misclassification harms law-abiding competitors and** 19 **would-be competitors.**

20 116. Defendants’ unfair and unlawful treatment of their Drivers also confers an unfair
21 advantage on Defendants over their law-abiding competitors and would-be competitors.
22 Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full
23 compensation and benefits they earn as employees to offer their ride-hailing services at an
24 artificially low cost, decimating competitors and generating billions of dollars in private investor
25 wealth off the backs of vulnerable Drivers.

26 117. Defendants’ misclassification of their Drivers allows both companies to unlawfully
27 reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they
28

1 lawfully classified and compensated their Drivers as employees, including reimbursing Drivers
2 for their vehicle maintenance and fuel expenses.

3 118. Because driver compensation, along with vehicle maintenance and fuel expenses,
4 generally constitutes the lion's share of operating costs for a car service, Defendants' illicit
5 savings allow them to gain an out-sized competitive advantage over other transportation
6 providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and
7 vehicle costs of running a transportation service from well-resourced Defendants onto their
8 under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a
9 substantial competitive disadvantage.

10 119. In addition to avoiding paying Drivers for the full compensation and reimbursements
11 they earn as employees under state and local wage and hour laws, Defendants also avoid paying
12 their share of state and local payroll taxes and workers' compensation insurance premiums.

13 120. On information and belief, the illicit cost savings Defendants have reaped as a result
14 of avoiding employer contributions to state and local unemployment and social insurance
15 programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the
16 full compensation and benefits they are guaranteed under law as employees pushes the total
17 amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be
18 competitors who cannot enter the market—even higher.

19 **FIRST CAUSE OF ACTION**

20 **INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF** 21 **BUSINESS AND PROFESSIONS CODE SECTION 17200** 22 **(Against all Defendants)**

23 121. The People reallege and incorporate by reference each allegation contained in the
24 above paragraphs as if fully set forth herein.

25 122. Defendants have engaged, and continue to engage, in acts or practices that are
26 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
27 section 17200 of the Business and Professions Code. These acts or practices include, but are not
28 limited to, the following:

- a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;
- b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently \$13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);
- c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently \$15.59 per hour);
- d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently \$14.25 per hour);
- e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently \$13.00 per hour);
- f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);
- g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;
- h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;
- i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

- j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;
- k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;
- l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;
- m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;
- n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;
- o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;
- p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;
- q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;
- r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;
- s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;
- t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;
- u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

1 v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C.
2 Wage Order 9-2001, and other local employee protection laws.

3 123. Each Defendant's misclassification of its Drivers as independent contractors and
4 accompanying failure to comply with numerous provisions of the California Labor Code,
5 including the employee classification provision of Labor Code section 2750.3, and applicable
6 local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates
7 California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

8 **SECOND CAUSE OF ACTION**

9 **INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3)**
10 **(Against all Defendants)**

11 124. The People reallege and incorporate by reference each allegation contained in the
12 above paragraphs as if fully set forth herein.

13 125. A.B. 5 permits an action for injunctive relief to prevent the continued
14 misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action
15 may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in
16 excess of 750,000, or by a City Attorney in a city and county.

17 126. Each Defendant continues to misclassify its Drivers as independent contractors.

18 127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to
19 prevent the continued misclassification of each Defendant's Drivers as independent contractors.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the People pray for the following relief:

22 1. Pursuant to Business and Professions Code section 17203, that each Defendant, their
23 successors, agents, representatives, employees, and all persons who act in concert with each
24 Defendant, be permanently enjoined from engaging in unfair competition as defined in Business
25 and Professions Code section 17200 et seq., including, but not limited to, the acts and practices
26 alleged in this Complaint;
27
28

1 2. Pursuant to Business and Professions Code section 17203, that the Court enter all
2 judgments as may be necessary to restore to any person in interest any money or property that
3 may have been acquired by violations of Business and Professions Code section 17200 as may be
4 proved at trial;

5 3. Pursuant to Business and Professions Code section 17206, that each Defendant be
6 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions
7 Code section 17200 et seq., as proven at trial;

8 4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
9 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
10 perpetrated against a senior citizen or disabled person, as proven at trial;

11 5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from
12 continuing to misclassify its Drivers as independent contractors;

13 6. That the People recover their costs of suit; and

14 7. Such other and further relief that the Court deems appropriate and just.

1 Dated: May 5, 2020

Respectfully Submitted,

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3 Attorney General of California
4 MICHAEL L. NEWMAN
5 Senior Assistant Attorney General
6 SATOSHI YANAI
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LA2019504400 | 91244721.docx

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: supplement for 5-20-20 meeting
Date: Thursday, May 7, 2020 9:29:01 AM
Attachments: [2020-04-29.docx](#)

Michelle Bigelow, MMC, CPMC

Council Services and Records Manager/Deputy City Clerk

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From: John Lang <John.Lang@morganhill.ca.gov>
Sent: Thursday, May 7, 2020 9:23 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

For next public comment

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Thursday, May 07, 2020 9:19 AM
To: Barry Holtzclaw <bholtzclaw@newsvmmedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; Nathan Mixer <nmixter@newsvmmedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Tammy Brownlow <president@gilroyedc.org>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor-supervisor@gmail.com>; supervisors@cosb.us; Sally <rebtruck@razzolink.com>; 'Pat Loe' <donpatloe@att.net>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; shawna freels <shawna.freels@ci.gilroy.ca.us>; Robert T. Dillon <rtdillon@garlic.com>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Editor, Gilroy Dispatch, Hollister Freelance and Morgan Hill Times,
Please publish Jon Coupal's Article as a Guest Editorial so that your readers will know how taxpayers feel about being shafted by boondoggle transit fiascoes, and higher gas & diesel taxes to subsidize bankrupt-from-conception public sector transit. We could save billions, and lower local government budget deficits if we privatized transit. Have all transit riders take Uber, Lyft, shuttles, taxis, and pay their fares, and we'd save big bucks. We cannot afford wasteful public sector transit, when we could have much more transportation for much less money,

less fraud, less waste, and less abusive governance by unelected "directors" at joint power authorities that nobody ever voted for. If local elected Supervisors and Councilmembers cared for taxpayers, then they'd end the fraud, waste and abuse at the transit agencies, and that goes double for CAHSRA's Bullet-in-the-Brain Train.

Joseph P. Thompson, Esq.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

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cc: PUBLIC COMMENT: NEXT MEETING: VIRTUAL, REAL, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"

----- Forwarded Message -----

From: Jon Coupal <jon@hjta.org>

To: 'Joseph Patrick Thompson' <translaw@pacbell.net>

Sent: Monday, May 4, 2020, 09:54:47 AM PDT

Subject: RE: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]

Sent: Monday, May 04, 2020 9:08 AM

To: Jon Coupal <jon@hjta.org>

Subject: Re: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon,

Please send me a copy of your Article and I'll send it to my State Senator.

Joe Thompson

(408) 607-7351 cell phone

Napa

On Saturday, May 2, 2020, 06:23:21 AM PDT, Jon Coupal <jon@hjta.org> wrote:

Wait until you see my column on Monday.

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]
Sent: Friday, May 01, 2020 2:29 PM
To: Jon Coupal <jon@hjta.org>; Senator Dodd <senator.dodd@senate.ca.gov>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Jon, and Senator Dodd,

We didn't vote for HSR like CAHSRA is cramming down our throats. We don't want it. Motorists cannot afford to pay more gas taxes for the subsidies it requires. We could have HSR without taxpayers paying a dime, if we put enough UPS, Fedex and Postal Service tonnage aboard HSR. But HSRC and then HSRA never listened to this private sector transport idea. They mistakenly believe that California's taxpayers have endless money.

Joe Thompson

(408) 607---7351 cell phone

----- Forwarded Message -----

From: HSR san.jose_merced@HSR <san.jose_merced@hsr.ca.gov>

To: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Friday, May 1, 2020, 10:59:27 AM PDT

Subject: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

[Automatic Reply]

Thank you for taking the time to contact the California High-Speed Rail Authority. Your views and comments are important to our team. We receive a large amount of letters, phone calls and emails, and because this email is not monitored 24 hours a day and generally not on the weekends, we may not be able to respond to you right away. However, our team works very hard to ensure that all comments/questions are read and responded to, when appropriate.

If you have any questions about working at the Authority, please visit our High-Speed Rail Careers page here: <http://hsr.ca.gov/About/Careers/index.html>.

Thank you again for your interest in the California High-Speed Rail Program.

[California High-Speed Rail Authority](#)



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NUCLEAR POWERED AIRCRAFT AND HIGH SPEED RAIL

Jon Coupal

A long forgotten aspect of the nuclear arms race was the costly undertaking by the United States to develop a nuclear powered aircraft as a strategic bomber.

Even before Allied powers defeated Nazi Germany in 1945, both the United States and the Soviet Union were battling for post-war superiority. With the successful detonation of two atomic bombs – bringing the Pacific Theater hostilities to an abrupt halt – the U.S. had a brief period of nuclear superiority over the USSR.

That would not last long as the USSR quickly accelerated its nuclear program and the Cold War was on.

In May 1946, the United States Army Air Forces started the Nuclear Energy for the Propulsion of Aircraft (NEPA) project. The alluring idea was to build an aircraft that could, in theory, stay aloft indefinitely. In 1951, the NEPA project was succeeded by the Aircraft Nuclear Propulsion (ANP) program.

However, despite the efforts of America's best nuclear and aviation scientists working with a virtually unlimited budget, the problems were insurmountable. The biggest hurdle was that nuclear reactors are very heavy. Sustaining one aloft with a fixed-wing aircraft turned out to be a challenge that could only be overcome by using a modified B-26 as a platform.

Reducing the weight of the reactors by shielding them with lighter material put the flight crews in danger from the high risk of radiation exposure. This latter problem never worried the Soviets in that their similar programs were willing to so expose the crews. But this led to an unacceptable mortality rate, even for the Russians.

After more than a decade of throwing good dollars after bad, the aircraft nuclear propulsion programs were substantially terminated by President John F. Kennedy in 1961.

The lessons of history should be instructive for Californians, who have watched for more than a decade as the state has thrown their money into the increasingly impossible high-speed rail program.

Even before the California High-Speed Rail bond proposal appeared on the ballot in November 2008, the Howard Jarvis Taxpayers Association commissioned a study in conjunction with the Reason Foundation because of deep concerns about the project's viability. The study, published in September 2008, warned:

"The CHSRA plans as currently proposed are likely to have very little relationship to what would eventually be built due to questionable ridership projections and cost assumptions, overly optimistic projections of ridership diversion from other modes of transport, insufficient attention to potential speed restrictions and safety issues and discounting of potential community or political opposition. Further, the system's environmental benefits have been grossly exaggerated, especially with respect to reduction of greenhouse gas emissions that have been associated with climate change."

Every negative prediction about the project came to be realized. Even initial advocates of the project, including a former chairman of the High Speed Rail Authority, have turned against the costly boondoggle.

At the end of 2018, California's own State Auditor issued a scathing report excoriating the project's mismanagement, waste and lack of transparency. Speed-readers needed to go no further than the subtitle to learn the conclusion: "Flawed Decision Making and Poor Contract Management Have Contributed to Billions in Cost Overruns and Delays in the System's Construction."

Nothing has improved since then, and much looks even worse.

In December of 2019, the Federal Railroad Administration objected to the California High-Speed Rail Authority's plan to issue a request for proposals to build train track and install electrical wiring and maintenance facilities. The FRA warned, "it is premature for CHSRA to undertake another major design-build contract." Disregarding the concerns, the rail authority went ahead the next day with its plan to issue the RFP.

In February, the Authority issued its latest two-year "business plan," which once again increased the projected cost and reported a further delay in completion. Color us shocked.

Soon after, a draft environmental document outlined the preferred route from Bakersfield to Palmdale, an engineering feat that would cost \$18.1 billion and

mow down a high school, a homeless shelter, a church, eight motels, 253 housing units, 311 businesses and 175 agricultural fields.

In March, the L.A. Times revealed that employees of the rail authority's top consultant had been ordered to hide bad news about the project.

There's no hiding it. The Legislative Analyst's Office concluded that the latest HSR business plan is not realistic, has significant funding challenges, is susceptible to further cost overruns and is inconsistent with voter intent because it relies on public subsidies.

In the 1960s, the President and Congress wisely pulled the plug on a failed project when it became obvious that all the money in the Pentagon couldn't make it fly. Until California's government wises up, we'll be stuck watching our taxpayer dollars fly out the window.

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: 5/20/20 public comment supplement
Date: Friday, May 15, 2020 3:56:32 PM
Attachments: [AGs Complaint against Uber & Lyft.pdf](#)

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Thursday, May 14, 2020 1:53 PM

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; Nathan Mixter <nmixter@newsymedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; shawna freels <shawna.freels@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rtdillon@garlic.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor-supervisor@gmail.com>; supervisors@cosb.us; 'Pat Loe' <donpatloe@att.net>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; cityclerk@hollister.ca.gov

Subject: LAWSUIT BY CALIFORNIA ATTORNEY GENERAL, SF, LA & SAN DIEGO, AGAINST UBER AND LYFT: ASSAULT ON SMALL BUSINESS IN CALIFORNIA

Dear Barry and Nathan,

At a time when California small business is under assault by the worldwide pandemic, that has cast our economy into the depths of a Great Depression, our State Attorney General and three big cities' attorneys sue small business owners in the transportation field. Already crucified, strangled and suffocated by governance abuses in California, and confiscatory taxes/fees, forced to subsidize government owned transport hemorrhaging red ink, transit agencies bankrupt-from-conception, capped-off by the Supermassive Black Hole Bullet Train, our government in California would snuff Californians trying to make a living. I thought we were to encourage small business? What hypocrites we are.

A few miles from my high school there were two garages where two sets of two young men started their small businesses:

Hewlett and Packard; and Jobs and Wozniak.

What would have happened if our government had snuffed-out those two small businesses started in garages in Cupertino and Los Altos?

AB-5 is contrary to the federal law signed by President Clinton, and carried in the House by Norm Mineta, later Secretary of Transportation.

So, do we want our law to encourage small business in transportation, as President Clinton and Norm Mineta wrote, or do we want to crush transport small business like AB-5 does in California?

History shows that the sounder public policy is to encourage, not kill-off, small business.

Caveat viator.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

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**cc: PUBLIC COMMENT: NEXT MEETING, VIRTUAL OR REAL; REGULAR, SPECIAL, STUDY
SESSION, PUBLIC
WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-
CALLED
MOBILITY PARTNERSHIP**

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**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

[Plaintiff's Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

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26 *Attorneys for the People of the State of California*

1 Plaintiff, the People of the State of California (“People”), by and through Xavier Becerra,
2 Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara
3 W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring
4 this action against Uber Technologies, Inc. (“Uber”), Lyft, Inc. (“Lyft”), and Does one through
5 fifty (collectively “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010
8 and 2012, respectively, they made the calculated business decision to misclassify their on-demand
9 drivers as independent contractors rather than employees. Both companies continue to
10 misclassify their drivers—and have exploited hundreds of thousands of California workers—in
11 direct contravention of California law.

12 2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and
13 requirements that implement California’s strong public policy in favor of protecting workers and
14 promoting fundamental fairness for all Californians. This longstanding policy framework
15 includes a comprehensive set of safeguards and benefits established by the State of California
16 (“State”), cities, and counties, such as minimum wages, overtime premium pay, reimbursement
17 for business expenses, workers’ compensation coverage for on-the-job injuries, paid sick leave,
18 and wage replacement programs like disability insurance and paid family leave. Uber and Lyft
19 owe their drivers these benefits and protections.

20 3. Recognizing the serious problem of employee misclassification and the harms it
21 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
22 Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5
23 (2019-2020 Reg. Sess.) (“A.B. 5”).) A.B. 5 codified and extended the California Supreme
24 Court’s landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018)
25 4 Cal.5th 903, reh’g. denied (June 20, 2018) (“*Dynamex*”). California law is clear: for the full
26 range of protections afforded by California’s Wage Orders, Labor Code, and Unemployment
27 Insurance Code, workers are generally presumed to be employees unless the hiring entity can
28

1 overcome this presumption by establishing each of the three factors embodied in the strict “ABC”
2 test.

3 4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber
4 and Lyft are traditional employers of these misclassified employees. They hire and fire them.
5 They control which drivers have access to which possible assignments. They set driver quality
6 standards, monitor drivers for compliance with those standards, and discipline drivers for not
7 meeting them. They set the fares passengers can be charged and determine how much drivers are
8 paid.

9 5. Uber and Lyft are transportation companies in the business of selling rides to
10 customers, and their drivers are the employees who provide the rides they sell. The fact that Uber
11 and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their
12 fundamental rights as employees.

13 6. But rather than own up to their legal responsibilities, Uber and Lyft have worked
14 relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature
15 declined. They utilize driver contracts with mandatory arbitration and class action waiver
16 provisions to stymie private enforcement of drivers’ rights. And now, even amid a once-in-a-
17 century pandemic, they have gone to extraordinary lengths to convince the public that their
18 unlawful misclassification scheme is in the public interest. Both companies have launched an
19 aggressive public relations campaign in the hopes of enshrining their ability to mistreat their
20 workers, all while peddling the lie that driver flexibility and worker protections are somehow
21 legally incompatible.

22 7. Uber’s and Lyft’s motivation for breaking the law is simple: by misclassifying their
23 drivers, Uber and Lyft do not “bear any of [the] costs or responsibilities” of complying with the
24 law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches:
25 “Our business would be adversely affected if Drivers were classified as employees instead of
26 independent contractors.” (Uber Securities and Exchange Com. (“SEC”) S-1, p. 28 [Filing Date:
27 April 11, 2019].)
28

8. As one federal district judge recently observed: “[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature” (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) __ F.Supp.3d __ [2020 WL 16484151, at *2].)

9. The State’s laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding” businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to “assume responsibility” for “the ill effects to workers and their families” of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the “erosion of the middle class and the rise in income inequality.” (A.B. 5, § 1(c).)

10. The time has come for Uber's and Lyft's massive, unlawful employee misclassification schemes to end. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because:

(i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Xavier Becerra, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and Dennis J. Herrera, the San Francisco City Attorney (collectively referred to as “Plaintiff” or the “People”).

15. Xavier Becerra is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under A.B. 5. (Lab. Code, § 2750.3(j).)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California's UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

1 18. The San Francisco City Attorney, Dennis J. Herrera, has the statutory authority to
2 bring actions in the name of the People of the State of California to enforce California’s UCL. As
3 the City Attorney of a city and county, he also has the express statutory authority under A.B. 5 to
4 bring an action for injunctive relief to prevent the continued misclassification of employees.
5 (Lab. Code, § 2750.3(j).)

6 **II. DEFENDANTS**

7 19. Defendant Uber Technologies, Inc. is a California corporation with its principal place
8 of business in San Francisco, California.

9 20. Defendant Lyft, Inc. is a California corporation with its principal place of business in
10 San Francisco, California.

11 21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are
12 unknown to the People. The People are informed and believe, and on this basis, allege that each
13 of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well
14 as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter
15 collectively referred to as “DOES 1 through 50”), are legally responsible for the conduct alleged
16 herein. The names and identities of defendants DOES 1 through 50 are unknown to the People,
17 and when they are known the People will amend this Complaint to state their names and
18 identities.

19 **FACTUAL ALLEGATIONS**

20 **I. UNDER DYNAMEX AND A.B. 5, CALIFORNIA USES THE ABC TEST TO** 21 **DETERMINE EMPLOYEE STATUS.**

22 22. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903,
23 along with the passage of A.B. 5, which went into effect January 1 of this year, have established
24 that the ABC test governs the determination of whether a worker is properly classified as an
25 employee or independent contractor for purposes of the Labor Code, the Unemployment
26 Insurance Code, and the Wage Orders of the Industrial Welfare Commission (“I.W.C.”).

27 23. Under the ABC test, for a worker to be properly classified as an independent
28 contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

1 establishing that *all* of the following three conditions are satisfied: (A) the worker is free from
2 the control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact; (B) the worker performs work that
4 is outside the usual course of the hiring entity's business; and (C) the worker is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as the
6 work performed. (Lab. Code, § 2750.3(a)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.)
7 These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

8 24. Because the hiring entity must establish all three parts of the ABC test in order to
9 lawfully classify a worker as an independent contractor, the hiring entity's failure to satisfy any
10 one part of the ABC test results in the worker in question being classified as an employee rather
11 than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

12 **II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT**
13 **SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH**
14 **DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.**

15 25. For the purpose of this Complaint, "Drivers" refers to individuals who fall into one or
16 both of the following two categories. *First Category:* All individuals who have driven for Uber
17 as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed
18 up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual
19 name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary
20 directly under their individual name or with a fictional/corporate name for their services as ride-
21 hailing drivers. *Second Category:* All individuals who have driven for Lyft as ride-hailing
22 drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive
23 directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with
24 a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their
25 individual name or with a fictional/corporate name for their services as ride-hailing drivers.
26 "Passengers" refer to individuals who receive Uber and/or Lyft ride-hailing services through such
27 Drivers.

28 26. Each Defendant operates a ride-hailing transportation service in which Passengers
may request and pay for on-demand rides from either Defendant by using that Defendant's

1 smartphone application (the “Uber App,” the “Lyft App,” “App” or “Defendant’s App”
2 respectively, and collectively, “Apps” or “Defendants’ Apps”).

3 27. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the
4 State of California to provide on-demand rides throughout the State to Passengers who book such
5 rides through either Defendant’s App.

6 28. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed
7 its name to Lyft, and subsequently sold the “Zimride” component of its business (a long-distance
8 carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a
9 market capitalization of approximately \$13 billion.

10 29. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had
11 a market capitalization of approximately \$53 billion.

12 30. Among the various ride-hailing options offered by Defendants, by far the largest is an
13 option in which individuals with non-commercial drivers’ licenses provide on-demand rides to
14 Passengers via each Defendant’s App using ordinary passenger vehicles. Lyft refers to this on-
15 demand option as a “Lyft.” Uber refers to this option as “UberX.”

16 **III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS**
17 **DRIVERS.**

18 31. Since first launching their ride-hailing services, each Defendant has misclassified, and
19 continues to misclassify, its Drivers as independent contractors instead of employees.

20 32. Each Defendant requires its Drivers, as a pre-condition of providing rides through
21 Defendant’s App, to agree to standard-form contracts and addenda. Each Defendant’s contracts
22 and addenda contain standardized terms and conditions that each Defendant sets regarding its
23 Drivers’ work. Each Defendant’s contracts and addenda also contain boilerplate language
24 unilaterally designating each Defendant’s Drivers as independent contractors.

25 **A. Part A of the ABC Test (“control and direction”)**

26 33. Each Defendant retains all necessary control over its Drivers’ work, which is to
27 transport Passengers from point A to point B in a car.
28

1 34. Each Defendant's App, in combination with each Defendant's policies, functions like
2 an algorithmic manager that effectively supervises its Drivers like a human manager.

3 35. Each Defendant determines what Drivers are eligible to provide ride-hailing services
4 on its App and can change its Driver standards in its discretion.

5 36. Each Defendant dictates the types of cars its Drivers may use on its app, as well as the
6 standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its
7 discretion.

8 37. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant
9 retains the right to terminate or pause a Driver's tenure at any time in accordance with terms,
10 conditions, and policies that each Defendant sets in its discretion.

11 38. Each Defendant sets the fares that Passengers pay for rides received through its App.

12 39. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

13 40. Each Defendant sets the amount of compensation that it pays its Drivers for providing
14 ride-hailing services to Passengers on its App.

15 41. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of
16 complaints that arise from its Drivers and Passengers.

17 42. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion,
18 ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost
19 items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of
20 compensation for ride-hailing services provided through the App.

21 43. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six
22 hours if the Driver reaches a twelve-hour driving limit.

23 44. Each Defendant does not freely permit its Drivers to choose their routes. For
24 example, if a Passenger complains to a Defendant about the route used by a Driver, each
25 Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient
26 route.

1 45. Each Defendant provides its Drivers with their work and pay by controlling the
2 dispatch of individual Passengers to individual Drivers through each Defendant's App. Each
3 Defendant's App controls which Drivers receive which ride requests and when.

4 46. Each Defendant controls and limits the information available to its Drivers and
5 Passengers through each Defendant's App, which each Defendant may change at any time
6 without notice.

7 47. When a Passenger requests an on-demand ride through Defendant's App, the App
8 shows and matches that Passenger with only one Driver at a time, regardless of the number of
9 nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App
10 shows and matches that Driver with only one Passenger at a time, regardless of the number of
11 nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on-
12 demand ride. Instead, they are selectively steered to one another through the centralized direction
13 of the App.

14 48. Each Defendant's App hides from its Passengers key information about its Drivers'
15 experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their
16 earnings in the way a true independent contractor or entrepreneur typically would.

17 49. Each Defendant's App allows its Drivers only approximately fifteen seconds to
18 accept or reject a trip request.

19 50. Drivers for each Defendant who consistently do not accept or reject trip requests
20 within the fifteen-second time limit may be temporarily logged out from each Defendant's App.
21 The length of this bar is within each Defendant's discretion.

22 51. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the
23 respective Defendant through its App of the Driver's trip status at every key step of the on-
24 demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of
25 the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to
26 constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

27 52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride
28 experience from which each Defendant derives its brand recognition, reputation, and value.

1 These rules, which each Defendant bills as “suggestions” or “tips,” cover matters such as music,
2 how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

3 53. Each Defendant retains the right to suspend or terminate its Drivers, or to cease
4 dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way
5 that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard.
6 These Driver behaviors can include, among other infractions, canceling too many rides, not
7 maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant
8 deems inefficient.

9 54. Each Defendant monitors, and ultimately controls, its Drivers through feedback it
10 solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its
11 Drivers’ performance. Each Defendant’s App solicits feedback and prompts its Drivers and
12 Passengers to rate one another from one to five stars for each Defendant’s benefit, as each
13 Defendant uses the ratings for its own discipline of Drivers.

14 55. Each Defendant determines the type of data and feedback its Drivers and Passengers
15 may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers
16 may provide feedback through its App.

17 56. Each Defendant uses information from its Passenger ratings to make decisions about
18 disciplining or terminating its Drivers. If the average rating of a Defendant’s Driver falls below a
19 certain threshold set by Defendant, Defendant may suspend or terminate that Driver from
20 providing ride-hailing services on Defendant’s App.

21 57. Each Defendant frequently experiments with software features that directly impact its
22 Drivers, creating an environment in which Drivers are subject to ever-shifting working
23 conditions, all determined in each Defendant’s discretion. According to Lyft, “We frequently test
24 driver incentives on subsets of existing drivers and potential drivers, and these incentives . . .
25 could have other unintended adverse consequences.” (See Lyft SEC 10-K, p. 20 [Filing Date:
26 February 28, 2020].) According to Uber, “[t]here are over 1,000 experiments running on our
27 platform at any given time.” (Deb et al., Under the Hood of Uber’s Experimentation Platform
28 (Aug. 28, 2018), <<https://eng.uber.com/xp/>> (as of May 1, 2020).)

1 58. Each Defendant introduces and then takes away features from its App in accordance
2 with its own business decisions. Each Defendant exerts control over its App, and thereby over its
3 Drivers.

4 **B. Part B of the ABC Test (“usual course of business”)**

5 59. Each Defendant’s Drivers are engaged in work that is within the usual course of each
6 Defendant’s business: the provision of on-demand rides. Each Defendant is a transportation
7 company that sells on-demand rides to its customers, i.e., its Passengers, who book and pay for
8 such rides through the Defendant’s App.

9 60. Drivers provide the on-demand ride. They are an integrated and essential part of each
10 Defendant’s transportation business. The immediate availability and temporal convenience of an
11 on-demand ride is the service that each Defendant sells to its Passengers.

12 61. Each Defendant publicly holds itself out to the public as a transportation company in
13 the business of selling on-demand rides.

14 62. Lyft has trademarked the slogan, “Your Friend with a Car.” Lyft advertises: “Get a
15 Ride Whenever You Need One”; “A ride in minutes”; and “Our drivers are always nearby so you
16 can get picked up, on demand, in minutes.”

17 63. Uber has trademarked the slogan, “Everyone’s Private Driver.” Uber advertises: “We
18 built Uber to deliver rides at the touch of a button”; “Always the ride you want”; “Request a ride,
19 hop in, and go”; “Sign up to ride. Rides on demand”; and “Get a reliable ride in minutes, at any
20 time and on any day of the year.”

21 64. Each Defendant represents to Passengers that it prescribes the qualifications of
22 Drivers on its App, as well as standards for Drivers’ quality of services. Each Defendant bills its
23 Passengers directly for the entire amount of the on-demand ride, and each Defendant’s Passengers
24 pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with
25 the quality of the on-demand ride provided through Defendant’s App, they report that problem to
26 Defendant, and Defendant may refund or cancel the Passenger’s fare.

27 65. Each Defendant is financially integrated with and dependent on its Drivers. Each
28 Defendant only generates income for its ride-hailing business if its Drivers transport and provide

rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

66. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

67. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on-demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

68. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

1 further improve the rider experience.” (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019],
2 emphasis added.) The prospectus identifies a “key factor” affecting Lyft’s performance as
3 “*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace.”
4 (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft’s
5 business model, “Why Lyft Wins,” Lyft’s IPO prospectus definitively answers: because Lyft is
6 “Driver-Centric.” (Id., at p. 3.)

7 70. Uber’s prospectus for its 2019 IPO also describes how Drivers, and the labor they
8 furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not
9 mince words: “If we are unable to attract or maintain a critical mass of Drivers . . . our platform
10 will become less appealing to platform users, *and our financial results would be adversely*
11 *impacted* Any decline in the number of Drivers . . . using our platform *would reduce the*
12 *value of our network and would harm our future operating results.*” (See Uber SEC S-1, *supra*,
13 at pp. 29-30, emphasis added.) Uber’s business model begins and ends with its Drivers.

14 **C. Part C of the ABC Test (“independently established trade, occupation, or**
15 **business”)**

16 71. Each Defendant’s Drivers are not engaged in an independently established trade,
17 occupation, or business of the same nature as the work they perform for each Defendant. Driving
18 itself is not a distinct trade, occupation, or business.

19 72. When driving for each Defendant, Drivers are not engaged in their own transportation
20 business, but are instead driving Passengers and generating income for the respective Defendant.

21 73. There are no specialized skills or training necessary to drive passengers on a ride-
22 hailing service. Consequently, each Defendant permits Drivers without any such skills or training
23 to provide on-demand rides on its App. For example, both of Defendant’s largest ride-hailing
24 options, “Lyft” and “UberX,” permit Drivers to offer ride-hailing services with an ordinary
25 driver’s license and a personal vehicle.

26 74. Each Defendant provides its Drivers with a necessary tool and instrumentality to
27 perform their on-demand, ride-hailing services—its App.

1 75. Each Defendant's App is the exclusive means by which Passengers and Drivers can
2 connect to, request, and provide each Defendant's on-demand rides.

3 76. Each Defendant's Drivers generally invest little to no capital to drive for each
4 Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a
5 smartphone and a car.

6 77. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents
7 its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running
8 their own independent businesses.

9 78. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers'
10 earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate
11 of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and
12 advertising of each Defendant's brand.

13 79. The limited economic levers that each Defendant leaves to its Drivers, such as
14 whether to drive at busier times or for more hours, are not consistent with the level of decision-
15 making normally exercised by entrepreneurs or those operating their own independent businesses.

16 80. Each Defendant limits its Drivers' ability to freely decline and cancel rides that
17 Drivers think will be unprofitable.

18 81. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus
19 to gauge their potential earnings based on demand for their services.

20 82. Each Defendant limits its Drivers' ability to share their accounts with other Drivers,
21 thereby curtailing its Drivers' ability to individually expand their business offerings.

22 83. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting
23 the ability of its Drivers to market themselves independently for repeat rides outside of
24 Defendant's App.

25 84. Each Defendant limits its Drivers' ability to take advantage of its App's financial
26 incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it
27 invites to participate in various, time-limited financial incentives that, for example, reward
28 Drivers for driving longer, or for driving at certain times and places. These financial incentives

1 are targeted to individual Drivers based on each Defendant’s own opaque criteria as implemented
2 by the algorithmic decision-making engines in its App. By selecting which Drivers will be
3 invited to participate in which financial incentives and on what individualized terms, each
4 Defendant, in effect, chooses which Drivers are financial “winners” and “losers.” Each
5 Defendant as the employer, not the Driver as an “entrepreneur,” determines the Driver’s earnings.

6 85. Each Defendant controls its Drivers’ ability to earn compensation via its App, making
7 trade-offs between its Drivers’ earnings and the price each Defendant charges to Passengers to the
8 benefit of each Defendant’s profit.

9 86. Lyft describes these trade-offs in its 2019 annual SEC report reporting that “changes”
10 made by Lyft “may be viewed positively from one group’s perspective (such as riders)” and
11 “negatively from another’s perspective such as (drivers).” (See Lyft SEC 10-K, *supra*, at p. 24.)

12 87. Uber’s SEC filings describe how the “greatest impact” on Uber’s Take Rate (the
13 company’s “take” on the difference between the Passenger’s fare on a ride and what the ride-
14 hailing company pays out to the Driver) has “historically” come through Uber’s unilateral
15 “adjustments to Driver incentives.” (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO
16 prospectus, Uber freely admits the control it exerts over its Drivers’ earnings—and the fact that
17 Uber’s own profit comes at its Drivers’ expense: “[A]s we aim to reduce Driver incentives to
18 improve our financial performance, we expect Driver dissatisfaction will generally increase.”
19 (*Id.*, at p. 30.)

20 **IV. DEFENDANTS’ UNLAWFUL MISCLASSIFICATION OF DRIVERS** 21 **RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.**

22 88. It is evident that neither Uber nor Lyft can meet their burden of showing that their
23 Drivers are independent contractors under California’s ABC test for misclassification as adopted
24 in *Dynamex*, *supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test,
25 Defendants exercise control over their Drivers through their Apps, which, in combination with
26 their policies, function like algorithmic managers that effectively supervise Defendants’ Drivers
27 like human managers. Under Part B of the ABC test, Drivers perform services within
28

1 Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC
2 test, Defendants cannot show that Drivers have established independent businesses.

3 89. Uber claims that “Drivers are at the heart of our service” and Lyft claims that Drivers
4 are “what makes Lyft ... Lyft.” But by misclassifying their Drivers, Defendants have devised an
5 unlawful business model that denies these very same Drivers the protections and benefits they
6 have rightfully earned as employees, and thereby gained an unlawful and unfair competitive
7 advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers,
8 undermines law-abiding competitors, evades Defendants' responsibility to contribute their share
9 as employers into the State's social insurance programs, and harms taxpayers who are often called
10 upon to address the negative consequences to Drivers and their families of Defendants'
11 exploitative employment practices.

12 **A. Defendants' unlawful misclassification deprives Drivers of their rights as**
13 **employees.**

14 90. Defendants' misclassification of their Driver workforce has allowed Defendants to
15 gain an unlawful competitive advantage over their competitors by circumventing the protections
16 and benefits that the law requires employers to provide to their employees. The laws violated by
17 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
18 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
19 benefits, and social insurance programs.

20 **1. Minimum Wages**

21 91. The law requires Drivers to be paid the applicable state or local minimum wage for
22 each hour worked, regardless of the compensation formula or method.

23 92. Defendants do not guarantee their Drivers a minimum wage under state and local
24 laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance
25 of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic
26 pricing pay surges, base rates, and minimum fares.

27 93. Defendants do not pay their Drivers for all their hours worked. Examples where each
28 Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

1 cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to
2 and returning from rides, and time spent logged on and monitoring each Defendant's App for ride
3 requests. Defendants cannot provide on-demand rides without the performance of these tasks.

4 94. Defendants have failed—and continue to fail—to meet their minimum wage
5 obligations with respect to their Drivers, including hours that are entirely unpaid and hours that
6 are paid at less than the applicable minimum wage.

7 **2. Overtime Wages**

8 95. The law requires Drivers to be paid the applicable overtime rate of pay—one-and-
9 one-half times or two times the Drivers' regular rate of pay—for all hours worked in excess of
10 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
11 seventh consecutive day of work in a workweek.

12 96. Defendants do not pay their Drivers overtime as required by law, despite the fact that
13 Drivers working overtime help Defendants to ensure the steady and constant supply of rides on
14 which Defendants' businesses depend.

15 97. Defendants have failed—and continue to fail—to meet these overtime pay obligations
16 with respect to their Drivers.

17 **3. Business Expenses**

18 98. The law requires Drivers to be paid or reimbursed for the necessary expenses in
19 performing their work.

20 99. Drivers pay for business expenses they incur in the course and scope of performing
21 their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear,
22 registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated
23 with using Defendants' Apps.

24 100. These expenses are substantial. For example, the Internal Revenue Service publishes
25 a "standard mileage rate," which currently estimates the cost of operating a vehicle for business
26 purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their
27 vehicles, without any reimbursement for this significant, work-related expense.
28

101. Defendants impose all the costs of operating the vehicles necessary to perform their ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business without them.

102. Defendants have failed—and continue to fail—to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

103. The law requires Drivers to be provided with one 30-minute duty-free meal period for a work period of more than five hours, and a second 30-minute duty-free meal period for a work period more than ten hours. The law further requires Drivers to be provided a ten-minute, paid, off-duty rest period for every four hours worked, or major fraction thereof. Authorized or required rest period time shall be counted as paid time worked.

104. Defendants do not provide for off-duty meal periods and do not authorize or permit paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the employee's regular rate of compensation for each failure, as required by law.

105. Defendants have failed—and continue to fail—to meet these meal and rest period obligations with respect to their Drivers.

5. Wage Statements

106. The law requires Drivers to receive regular and complete itemized wage statements from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly wages, piece rate wages, rest period pay, and nonproductive time pay.

107. Defendants do not provide Drivers with itemized wage statements in conformance with California law.

108. Defendants have failed—and continue to fail—to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

109. The law requires Drivers to be provided paid sick leave benefits as specified under California law and various local laws, including, but not limited to, the Los Angeles, San Diego, and San Francisco sick leave ordinances.

1 110. The law currently requires Drivers in San Francisco to receive health care
2 expenditures of \$3.08 per hour. In recent years the rate has ranged between \$2.53 and \$3.08 per
3 hour.

4 111. Drivers do not accrue the paid sick leave benefits or receive the health care
5 expenditures from Defendants that employers are required to provide under state and local law.

6 112. Defendants have failed—and continue to fail—to meet these sick leave and health
7 care expenditure obligations with respect to their Drivers.

8 **7. Social Insurance Programs**

9 113. The law requires Defendants to remit contributions or take other mandatory actions
10 under the State’s social insurance programs, including, but not limited to, unemployment
11 insurance, disability insurance, paid family leave, workers’ compensation, and San Francisco’s
12 Paid Parental Leave Ordinance.

13 114. These programs are intended to provide wage replacement and other benefits in the
14 event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to
15 care for a family member, or is otherwise unable to work.

16 115. Defendants have failed—and continue to fail—to meet these social insurance
17 program obligations with respect to their Drivers.

18 **B. Defendants’ unlawful misclassification harms law-abiding competitors and** 19 **would-be competitors.**

20 116. Defendants’ unfair and unlawful treatment of their Drivers also confers an unfair
21 advantage on Defendants over their law-abiding competitors and would-be competitors.
22 Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full
23 compensation and benefits they earn as employees to offer their ride-hailing services at an
24 artificially low cost, decimating competitors and generating billions of dollars in private investor
25 wealth off the backs of vulnerable Drivers.

26 117. Defendants’ misclassification of their Drivers allows both companies to unlawfully
27 reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they
28

1 lawfully classified and compensated their Drivers as employees, including reimbursing Drivers
2 for their vehicle maintenance and fuel expenses.

3 118. Because driver compensation, along with vehicle maintenance and fuel expenses,
4 generally constitutes the lion's share of operating costs for a car service, Defendants' illicit
5 savings allow them to gain an out-sized competitive advantage over other transportation
6 providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and
7 vehicle costs of running a transportation service from well-resourced Defendants onto their
8 under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a
9 substantial competitive disadvantage.

10 119. In addition to avoiding paying Drivers for the full compensation and reimbursements
11 they earn as employees under state and local wage and hour laws, Defendants also avoid paying
12 their share of state and local payroll taxes and workers' compensation insurance premiums.

13 120. On information and belief, the illicit cost savings Defendants have reaped as a result
14 of avoiding employer contributions to state and local unemployment and social insurance
15 programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the
16 full compensation and benefits they are guaranteed under law as employees pushes the total
17 amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be
18 competitors who cannot enter the market—even higher.

19 **FIRST CAUSE OF ACTION**

20 **INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF** 21 **BUSINESS AND PROFESSIONS CODE SECTION 17200** 22 **(Against all Defendants)**

23 121. The People reallege and incorporate by reference each allegation contained in the
24 above paragraphs as if fully set forth herein.

25 122. Defendants have engaged, and continue to engage, in acts or practices that are
26 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
27 section 17200 of the Business and Professions Code. These acts or practices include, but are not
28 limited to, the following:

- a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;
- b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently \$13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);
- c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently \$15.59 per hour);
- d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently \$14.25 per hour);
- e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently \$13.00 per hour);
- f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);
- g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;
- h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;
- i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

- j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;
- k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;
- l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;
- m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;
- n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;
- o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;
- p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;
- q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;
- r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;
- s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;
- t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;
- u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

1 v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C.
2 Wage Order 9-2001, and other local employee protection laws.

3 123. Each Defendant's misclassification of its Drivers as independent contractors and
4 accompanying failure to comply with numerous provisions of the California Labor Code,
5 including the employee classification provision of Labor Code section 2750.3, and applicable
6 local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates
7 California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

8 **SECOND CAUSE OF ACTION**

9 **INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3)**
10 **(Against all Defendants)**

11 124. The People reallege and incorporate by reference each allegation contained in the
12 above paragraphs as if fully set forth herein.

13 125. A.B. 5 permits an action for injunctive relief to prevent the continued
14 misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action
15 may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in
16 excess of 750,000, or by a City Attorney in a city and county.

17 126. Each Defendant continues to misclassify its Drivers as independent contractors.

18 127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to
19 prevent the continued misclassification of each Defendant's Drivers as independent contractors.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the People pray for the following relief:

22 1. Pursuant to Business and Professions Code section 17203, that each Defendant, their
23 successors, agents, representatives, employees, and all persons who act in concert with each
24 Defendant, be permanently enjoined from engaging in unfair competition as defined in Business
25 and Professions Code section 17200 et seq., including, but not limited to, the acts and practices
26 alleged in this Complaint;
27
28

1 2. Pursuant to Business and Professions Code section 17203, that the Court enter all
2 judgments as may be necessary to restore to any person in interest any money or property that
3 may have been acquired by violations of Business and Professions Code section 17200 as may be
4 proved at trial;

5 3. Pursuant to Business and Professions Code section 17206, that each Defendant be
6 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions
7 Code section 17200 et seq., as proven at trial;

8 4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
9 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
10 perpetrated against a senior citizen or disabled person, as proven at trial;

11 5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from
12 continuing to misclassify its Drivers as independent contractors;

13 6. That the People recover their costs of suit; and

14 7. Such other and further relief that the Court deems appropriate and just.

1 Dated: May 5, 2020

Respectfully Submitted,

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3 Attorney General of California
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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, May 20, 2020 7:00 p.m.

Virtual Meeting

Link to join the meeting can be found below, Morgan Hill, CA 95037

MEETING GUIDELINES

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order 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. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/052020CityCouncilMtg> or by calling in to: (669) 900-9128, then enter the meeting id: 945 3961 4854.

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

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Minutes Clerk Angie Gonzalez

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Minutes Clerk Angie Gonzlez

PROCLAMATIONS

Proclaiming the Week of May 17-23, 2020 as Public Works Week
Proclaiming the Month of May 2020 as Ehlers-Danlos Syndrome and Hypermobility Spectrum Disorder
Awareness Month

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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)

PUBLIC COMMENT SUPPLEMENTS

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

Recommendation:

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

2. APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

3. APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

Recommendation:

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

4. APPROVE THE MAY 6, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

5. CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

Recommendation:

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

Estimated Time: 90 Minutes

6. REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

Recommendation:

Review and provide direction on the Economic Development Business Recovery Work Program.

Estimated Time: 75 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 17000 Monterey Road

Agency Negotiators: Christina Turner, Chris Ghione

Negotiating Parties: Gavilan Community College District, City of Morgan Hill

Under Negotiation: Price and Terms of Payment for Lease

CLOSED SESSION ANNOUNCEMENT

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



From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: supplement for 5-20-20 meeting
Date: Thursday, May 7, 2020 9:29:01 AM
Attachments: [2020-04-29.docx](#)

Michelle Bigelow, MMC, CPMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: John Lang <John.Lang@morganhill.ca.gov>
Sent: Thursday, May 7, 2020 9:23 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

For next public comment

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Thursday, May 07, 2020 9:19 AM
To: Barry Holtzclaw <bholtzclaw@newsvmmedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; Nathan Mixer <nmixter@newsvmmedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Tammy Brownlow <president@gilroyedc.org>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinforsupervisor@gmail.com>; supervisors@cosb.us; Sally <rebtruck@razzolink.com>; 'Pat Loe' <donpatloe@att.net>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; shawna freels <shawna.freels@ci.gilroy.ca.us>; Robert T. Dillon <rtdillon@garlic.com>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Editor, Gilroy Dispatch, Hollister Freelance and Morgan Hill Times,
Please publish Jon Coupal's Article as a Guest Editorial so that your readers will know how taxpayers feel about being shafted by boondoggle transit fiascoes, and higher gas & diesel taxes to subsidize bankrupt-from-conception public sector transit. We could save billions, and lower local government budget deficits if we privatized transit. Have all transit riders take Uber, Lyft, shuttles, taxis, and pay their fares, and we'd save big bucks. We cannot afford wasteful public sector transit, when we could have much more transportation for much less money,

Communication: Public Comment Supplements (PUBLIC COMMENT)

less fraud, less waste, and less abusive governance by unelected "directors" at joint power authorities that nobody ever voted for. If local elected Supervisors and Councilmembers cared for taxpayers, then they'd end the fraud, waste and abuse at the transit agencies, and that goes double for CAHSRA's Bullet-in-the-Brain Train.

Joseph P. Thompson, Esq.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

cc: PUBLIC COMMENT: NEXT MEETING: VIRTUAL, REAL, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"

----- Forwarded Message -----

From: Jon Coupal <jon@hjta.org>

To: 'Joseph Patrick Thompson' <translaw@pacbell.net>

Sent: Monday, May 4, 2020, 09:54:47 AM PDT

Subject: RE: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]

Sent: Monday, May 04, 2020 9:08 AM

To: Jon Coupal <jon@hjta.org>

Subject: Re: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon,

Please send me a copy of your Article and I'll send it to my State Senator.

Joe Thompson

(408) 607-7351 cell phone

Napa

Communication: Public Comment Supplements (PUBLIC COMMENT)

On Saturday, May 2, 2020, 06:23:21 AM PDT, Jon Coupal <jon@hjta.org> wrote:

Wait until you see my column on Monday.

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]
Sent: Friday, May 01, 2020 2:29 PM
To: Jon Coupal <jon@hjta.org>; Senator Dodd <senator.dodd@senate.ca.gov>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Jon, and Senator Dodd,

We didn't vote for HSR like CAHSRA is cramming down our throats. We don't want it. Motorists cannot afford to pay more gas taxes for the subsidies it requires. We could have HSR without taxpayers paying a dime, if we put enough UPS, Fedex and Postal Service tonnage aboard HSR. But HSRC and then HSRA never listened to this private sector transport idea. They mistakenly believe that California's taxpayers have endless money.

Joe Thompson

(408) 607---7351 cell phone

----- Forwarded Message -----

From: HSR san.jose_merced@HSR <san.jose_merced@hsr.ca.gov>

Communication: Public Comment Supplements (PUBLIC COMMENT)

To: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Friday, May 1, 2020, 10:59:27 AM PDT

Subject: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

[Automatic Reply]

Thank you for taking the time to contact the California High-Speed Rail Authority. Your views and comments are important to our team. We receive a large amount of letters, phone calls and emails, and because this email is not monitored 24 hours a day and generally not on the weekends, we may not be able to respond to you right away. However, our team works very hard to ensure that all comments/questions are read and responded to, when appropriate.

If you have any questions about working at the Authority, please visit our High-Speed Rail Careers page here: <http://hsr.ca.gov/About/Careers/index.html>.

Thank you again for your interest in the California High-Speed Rail Program.

[California High-Speed Rail Authority](#)



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Communication: Public Comment Supplements (PUBLIC COMMENT)

NUCLEAR POWERED AIRCRAFT AND HIGH SPEED RAIL

Jon Coupal

A long forgotten aspect of the nuclear arms race was the costly undertaking by the United States to develop a nuclear powered aircraft as a strategic bomber.

Even before Allied powers defeated Nazi Germany in 1945, both the United States and the Soviet Union were battling for post-war superiority. With the successful detonation of two atomic bombs – bringing the Pacific Theater hostilities to an abrupt halt – the U.S. had a brief period of nuclear superiority over the USSR.

That would not last long as the USSR quickly accelerated its nuclear program and the Cold War was on.

In May 1946, the United States Army Air Forces started the Nuclear Energy for the Propulsion of Aircraft (NEPA) project. The alluring idea was to build an aircraft that could, in theory, stay aloft indefinitely. In 1951, the NEPA project was succeeded by the Aircraft Nuclear Propulsion (ANP) program.

However, despite the efforts of America's best nuclear and aviation scientists working with a virtually unlimited budget, the problems were insurmountable. The biggest hurdle was that nuclear reactors are very heavy. Sustaining one aloft with a fixed-wing aircraft turned out to be a challenge that could only be overcome by using a modified B-26 as a platform.

Reducing the weight of the reactors by shielding them with lighter material put the flight crews in danger from the high risk of radiation exposure. This latter problem never worried the Soviets in that their similar programs were willing to so expose the crews. But this led to an unacceptable mortality rate, even for the Russians.

After more than a decade of throwing good dollars after bad, the aircraft nuclear propulsion programs were substantially terminated by President John F. Kennedy in 1961.

The lessons of history should be instructive for Californians, who have watched for more than a decade as the state has thrown their money into the increasingly impossible high-speed rail program.

Even before the California High-Speed Rail bond proposal appeared on the ballot in November 2008, the Howard Jarvis Taxpayers Association commissioned a study in conjunction with the Reason Foundation because of deep concerns about the project's viability. The study, published in September 2008, warned:

"The CHSRA plans as currently proposed are likely to have very little relationship to what would eventually be built due to questionable ridership projections and cost assumptions, overly optimistic projections of ridership diversion from other modes of transport, insufficient attention to potential speed restrictions and safety issues and discounting of potential community or political opposition. Further, the system's environmental benefits have been grossly exaggerated, especially with respect to reduction of greenhouse gas emissions that have been associated with climate change."

Every negative prediction about the project came to be realized. Even initial advocates of the project, including a former chairman of the High Speed Rail Authority, have turned against the costly boondoggle.

At the end of 2018, California's own State Auditor issued a scathing report excoriating the project's mismanagement, waste and lack of transparency. Speed-readers needed to go no further than the subtitle to learn the conclusion: "Flawed Decision Making and Poor Contract Management Have Contributed to Billions in Cost Overruns and Delays in the System's Construction."

Nothing has improved since then, and much looks even worse.

In December of 2019, the Federal Railroad Administration objected to the California High-Speed Rail Authority's plan to issue a request for proposals to build train track and install electrical wiring and maintenance facilities. The FRA warned, "it is premature for CHSRA to undertake another major design-build contract." Disregarding the concerns, the rail authority went ahead the next day with its plan to issue the RFP.

In February, the Authority issued its latest two-year "business plan," which once again increased the projected cost and reported a further delay in completion. Color us shocked.

Soon after, a draft environmental document outlined the preferred route from Bakersfield to Palmdale, an engineering feat that would cost \$18.1 billion and

mow down a high school, a homeless shelter, a church, eight motels, 253 housing units, 311 businesses and 175 agricultural fields.

In March, the L.A. Times revealed that employees of the rail authority's top consultant had been ordered to hide bad news about the project.

There's no hiding it. The Legislative Analyst's Office concluded that the latest HSR business plan is not realistic, has significant funding challenges, is susceptible to further cost overruns and is inconsistent with voter intent because it relies on public subsidies.

In the 1960s, the President and Congress wisely pulled the plug on a failed project when it became obvious that all the money in the Pentagon couldn't make it fly. Until California's government wises up, we'll be stuck watching our taxpayer dollars fly out the window.

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: 5/20/20 public comment supplement
Date: Friday, May 15, 2020 3:56:32 PM
Attachments: [AGs Complaint against Uber & Lyft.pdf](#)

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Thursday, May 14, 2020 1:53 PM

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; Nathan Mixter <nmixter@newsymedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; shawna freels <shawna.freels@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rt Dillon@garlic.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor supervisor@gmail.com>; supervisors@cosb.us; 'Pat Loe' <donpatloe@att.net>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; cityclerk@hollister.ca.gov
Subject: LAWSUIT BY CALIFORNIA ATTORNEY GENERAL, SF, LA & SAN DIEGO, AGAINST UBER AND LYFT: ASSAULT ON SMALL BUSINESS IN CALIFORNIA

Dear Barry and Nathan,

At a time when California small business is under assault by the worldwide pandemic, that has cast our economy into the depths of a Great Depression, our State Attorney General and three big cities' attorneys sue small business owners in the transportation field. Already crucified, strangled and suffocated by governance abuses in California, and confiscatory taxes/fees, forced to subsidize government owned transport hemorrhaging red ink, transit agencies bankrupt-from-conception, capped-off by the Supermassive Black Hole Bullet Train, our government in California would snuff Californians trying to make a living. I thought we were to encourage small business? What hypocrites we are.

A few miles from my high school there were two garages where two sets of two young men started their small businesses:

Hewlett and Packard; and Jobs and Wozniak.

What would have happened if our government had snuffed-out those two small businesses started in garages in Cupertino and Los Altos?

AB-5 is contrary to the federal law signed by President Clinton, and carried in the House by Norm Mineta, later Secretary of Transportation.

So, do we want our law to encourage small business in transportation, as President Clinton and Norm Mineta wrote, or do we want to crush transport small business like AB-5 does in California?

History shows that the sounder public policy is to encourage, not kill-off, small business.

Caveat viator.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

**cc: PUBLIC COMMENT: NEXT MEETING, VIRTUAL OR REAL; REGULAR, SPECIAL, STUDY
SESSION, PUBLIC
WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-
CALLED
MOBILITY PARTNERSHIP**

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Communication: Public Comment Supplements (PUBLIC COMMENT)

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Attorneys for the People of the State of California

**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

[Plaintiff's Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 *Additional Counsel for the People (Continued from Preceding Page):*

2 [COUNSEL LISTED IN ALPHABETICAL ORDER]

3 MICHAEL N. FEUER

4 City Attorney, City of Los Angeles

5 MICHAEL BOSTROM, SBN 211778

6 Managing Assistant City Attorney

7 DANIELLE GOLDSTEIN, SBN 257486

8 Deputy City Attorney

9 Office of the Los Angeles City Attorney

10 200 North Spring Street, 14th Floor

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Chief Deputy City Attorney

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Telephone: (415) 554-3800

E-mail: matthew.goldberg@sfcityatty.org

26 *Attorneys for the People of the State of California*

1 Plaintiff, the People of the State of California (“People”), by and through Xavier Becerra,
2 Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara
3 W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring
4 this action against Uber Technologies, Inc. (“Uber”), Lyft, Inc. (“Lyft”), and Does one through
5 fifty (collectively “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010
8 and 2012, respectively, they made the calculated business decision to misclassify their on-demand
9 drivers as independent contractors rather than employees. Both companies continue to
10 misclassify their drivers—and have exploited hundreds of thousands of California workers—in
11 direct contravention of California law.

12 2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and
13 requirements that implement California’s strong public policy in favor of protecting workers and
14 promoting fundamental fairness for all Californians. This longstanding policy framework
15 includes a comprehensive set of safeguards and benefits established by the State of California
16 (“State”), cities, and counties, such as minimum wages, overtime premium pay, reimbursement
17 for business expenses, workers’ compensation coverage for on-the-job injuries, paid sick leave,
18 and wage replacement programs like disability insurance and paid family leave. Uber and Lyft
19 owe their drivers these benefits and protections.

20 3. Recognizing the serious problem of employee misclassification and the harms it
21 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
22 Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5
23 (2019-2020 Reg. Sess.) (“A.B. 5”).) A.B. 5 codified and extended the California Supreme
24 Court’s landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018)
25 4 Cal.5th 903, reh’g. denied (June 20, 2018) (“*Dynamex*”). California law is clear: for the full
26 range of protections afforded by California’s Wage Orders, Labor Code, and Unemployment
27 Insurance Code, workers are generally presumed to be employees unless the hiring entity can
28

1 overcome this presumption by establishing each of the three factors embodied in the strict “ABC”
2 test.

3 4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber
4 and Lyft are traditional employers of these misclassified employees. They hire and fire them.
5 They control which drivers have access to which possible assignments. They set driver quality
6 standards, monitor drivers for compliance with those standards, and discipline drivers for not
7 meeting them. They set the fares passengers can be charged and determine how much drivers are
8 paid.

9 5. Uber and Lyft are transportation companies in the business of selling rides to
10 customers, and their drivers are the employees who provide the rides they sell. The fact that Uber
11 and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their
12 fundamental rights as employees.

13 6. But rather than own up to their legal responsibilities, Uber and Lyft have worked
14 relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature
15 declined. They utilize driver contracts with mandatory arbitration and class action waiver
16 provisions to stymie private enforcement of drivers’ rights. And now, even amid a once-in-a-
17 century pandemic, they have gone to extraordinary lengths to convince the public that their
18 unlawful misclassification scheme is in the public interest. Both companies have launched an
19 aggressive public relations campaign in the hopes of enshrining their ability to mistreat their
20 workers, all while peddling the lie that driver flexibility and worker protections are somehow
21 legally incompatible.

22 7. Uber’s and Lyft’s motivation for breaking the law is simple: by misclassifying their
23 drivers, Uber and Lyft do not “bear any of [the] costs or responsibilities” of complying with the
24 law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches:
25 “Our business would be adversely affected if Drivers were classified as employees instead of
26 independent contractors.” (Uber Securities and Exchange Com. (“SEC”) S-1, p. 28 [Filing Date:
27 April 11, 2019].)
28

8. As one federal district judge recently observed: “[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature” (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) __ F.Supp.3d __ [2020 WL 16484151, at *2].)

9. The State’s laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding” businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to “assume responsibility” for “the ill effects to workers and their families” of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the “erosion of the middle class and the rise in income inequality.” (A.B. 5, § 1(c).)

10. The time has come for Uber’s and Lyft’s massive, unlawful employee misclassification schemes to end. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because:

(i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Xavier Becerra, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and Dennis J. Herrera, the San Francisco City Attorney (collectively referred to as “Plaintiff” or the “People”).

15. Xavier Becerra is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under A.B. 5. (Lab. Code, § 2750.3(j).)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

1 18. The San Francisco City Attorney, Dennis J. Herrera, has the statutory authority to
2 bring actions in the name of the People of the State of California to enforce California’s UCL. As
3 the City Attorney of a city and county, he also has the express statutory authority under A.B. 5 to
4 bring an action for injunctive relief to prevent the continued misclassification of employees.
5 (Lab. Code, § 2750.3(j).)

6 **II. DEFENDANTS**

7 19. Defendant Uber Technologies, Inc. is a California corporation with its principal place
8 of business in San Francisco, California.

9 20. Defendant Lyft, Inc. is a California corporation with its principal place of business in
10 San Francisco, California.

11 21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are
12 unknown to the People. The People are informed and believe, and on this basis, allege that each
13 of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well
14 as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter
15 collectively referred to as “DOES 1 through 50”), are legally responsible for the conduct alleged
16 herein. The names and identities of defendants DOES 1 through 50 are unknown to the People,
17 and when they are known the People will amend this Complaint to state their names and
18 identities.

19 **FACTUAL ALLEGATIONS**

20 **I. UNDER DYNAMEX AND A.B. 5, CALIFORNIA USES THE ABC TEST TO** 21 **DETERMINE EMPLOYEE STATUS.**

22 22. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903,
23 along with the passage of A.B. 5, which went into effect January 1 of this year, have established
24 that the ABC test governs the determination of whether a worker is properly classified as an
25 employee or independent contractor for purposes of the Labor Code, the Unemployment
26 Insurance Code, and the Wage Orders of the Industrial Welfare Commission (“I.W.C.”).

27 23. Under the ABC test, for a worker to be properly classified as an independent
28 contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

1 establishing that *all* of the following three conditions are satisfied: (A) the worker is free from
2 the control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact; (B) the worker performs work that
4 is outside the usual course of the hiring entity’s business; and (C) the worker is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as the
6 work performed. (Lab. Code, § 2750.3(a)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.)
7 These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

8 24. Because the hiring entity must establish all three parts of the ABC test in order to
9 lawfully classify a worker as an independent contractor, the hiring entity’s failure to satisfy any
10 one part of the ABC test results in the worker in question being classified as an employee rather
11 than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

12 **II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT**
13 **SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH**
14 **DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.**

15 25. For the purpose of this Complaint, “Drivers” refers to individuals who fall into one or
16 both of the following two categories. *First Category:* All individuals who have driven for Uber
17 as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed
18 up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual
19 name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary
20 directly under their individual name or with a fictional/corporate name for their services as ride-
21 hailing drivers. *Second Category:* All individuals who have driven for Lyft as ride-hailing
22 drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive
23 directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with
24 a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their
25 individual name or with a fictional/corporate name for their services as ride-hailing drivers.
26 “Passengers” refer to individuals who receive Uber and/or Lyft ride-hailing services through such
27 Drivers.

28 26. Each Defendant operates a ride-hailing transportation service in which Passengers
may request and pay for on-demand rides from either Defendant by using that Defendant’s

smartphone application (the “Uber App,” the “Lyft App,” “App” or “Defendant’s App” respectively, and collectively, “Apps” or “Defendants’ Apps”).

27. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the State of California to provide on-demand rides throughout the State to Passengers who book such rides through either Defendant’s App.

28. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed its name to Lyft, and subsequently sold the “Zimride” component of its business (a long-distance carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a market capitalization of approximately \$13 billion.

29. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had a market capitalization of approximately \$53 billion.

30. Among the various ride-hailing options offered by Defendants, by far the largest is an option in which individuals with non-commercial drivers’ licenses provide on-demand rides to Passengers via each Defendant’s App using ordinary passenger vehicles. Lyft refers to this on-demand option as a “Lyft.” Uber refers to this option as “UberX.”

III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS DRIVERS.

31. Since first launching their ride-hailing services, each Defendant has misclassified, and continues to misclassify, its Drivers as independent contractors instead of employees.

32. Each Defendant requires its Drivers, as a pre-condition of providing rides through Defendant’s App, to agree to standard-form contracts and addenda. Each Defendant’s contracts and addenda contain standardized terms and conditions that each Defendant sets regarding its Drivers’ work. Each Defendant’s contracts and addenda also contain boilerplate language unilaterally designating each Defendant’s Drivers as independent contractors.

A. Part A of the ABC Test (“control and direction”)

33. Each Defendant retains all necessary control over its Drivers’ work, which is to transport Passengers from point A to point B in a car.

34. Each Defendant's App, in combination with each Defendant's policies, functions like an algorithmic manager that effectively supervises its Drivers like a human manager.

35. Each Defendant determines what Drivers are eligible to provide ride-hailing services on its App and can change its Driver standards in its discretion.

36. Each Defendant dictates the types of cars its Drivers may use on its app, as well as the standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its discretion.

37. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant retains the right to terminate or pause a Driver's tenure at any time in accordance with terms, conditions, and policies that each Defendant sets in its discretion.

38. Each Defendant sets the fares that Passengers pay for rides received through its App.

39. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

40. Each Defendant sets the amount of compensation that it pays its Drivers for providing ride-hailing services to Passengers on its App.

41. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of complaints that arise from its Drivers and Passengers.

42. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion, ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of compensation for ride-hailing services provided through the App.

43. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six hours if the Driver reaches a twelve-hour driving limit.

44. Each Defendant does not freely permit its Drivers to choose their routes. For example, if a Passenger complains to a Defendant about the route used by a Driver, each Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient route.

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 45. Each Defendant provides its Drivers with their work and pay by controlling the
2 dispatch of individual Passengers to individual Drivers through each Defendant's App. Each
3 Defendant's App controls which Drivers receive which ride requests and when.

4 46. Each Defendant controls and limits the information available to its Drivers and
5 Passengers through each Defendant's App, which each Defendant may change at any time
6 without notice.

7 47. When a Passenger requests an on-demand ride through Defendant's App, the App
8 shows and matches that Passenger with only one Driver at a time, regardless of the number of
9 nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App
10 shows and matches that Driver with only one Passenger at a time, regardless of the number of
11 nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on-
12 demand ride. Instead, they are selectively steered to one another through the centralized direction
13 of the App.

14 48. Each Defendant's App hides from its Passengers key information about its Drivers'
15 experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their
16 earnings in the way a true independent contractor or entrepreneur typically would.

17 49. Each Defendant's App allows its Drivers only approximately fifteen seconds to
18 accept or reject a trip request.

19 50. Drivers for each Defendant who consistently do not accept or reject trip requests
20 within the fifteen-second time limit may be temporarily logged out from each Defendant's App.
21 The length of this bar is within each Defendant's discretion.

22 51. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the
23 respective Defendant through its App of the Driver's trip status at every key step of the on-
24 demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of
25 the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to
26 constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

27 52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride
28 experience from which each Defendant derives its brand recognition, reputation, and value.

1 These rules, which each Defendant bills as “suggestions” or “tips,” cover matters such as music,
2 how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

3 53. Each Defendant retains the right to suspend or terminate its Drivers, or to cease
4 dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way
5 that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard.
6 These Driver behaviors can include, among other infractions, canceling too many rides, not
7 maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant
8 deems inefficient.

9 54. Each Defendant monitors, and ultimately controls, its Drivers through feedback it
10 solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its
11 Drivers’ performance. Each Defendant’s App solicits feedback and prompts its Drivers and
12 Passengers to rate one another from one to five stars for each Defendant’s benefit, as each
13 Defendant uses the ratings for its own discipline of Drivers.

14 55. Each Defendant determines the type of data and feedback its Drivers and Passengers
15 may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers
16 may provide feedback through its App.

17 56. Each Defendant uses information from its Passenger ratings to make decisions about
18 disciplining or terminating its Drivers. If the average rating of a Defendant’s Driver falls below a
19 certain threshold set by Defendant, Defendant may suspend or terminate that Driver from
20 providing ride-hailing services on Defendant’s App.

21 57. Each Defendant frequently experiments with software features that directly impact its
22 Drivers, creating an environment in which Drivers are subject to ever-shifting working
23 conditions, all determined in each Defendant’s discretion. According to Lyft, “We frequently test
24 driver incentives on subsets of existing drivers and potential drivers, and these incentives . . .
25 could have other unintended adverse consequences.” (See Lyft SEC 10-K, p. 20 [Filing Date:
26 February 28, 2020].) According to Uber, “[t]here are over 1,000 experiments running on our
27 platform at any given time.” (Deb et al., Under the Hood of Uber’s Experimentation Platform
28 (Aug. 28, 2018), <<https://eng.uber.com/xp/>> (as of May 1, 2020).)

1 58. Each Defendant introduces and then takes away features from its App in accordance
2 with its own business decisions. Each Defendant exerts control over its App, and thereby over its
3 Drivers.

4 **B. Part B of the ABC Test (“usual course of business”)**

5 59. Each Defendant’s Drivers are engaged in work that is within the usual course of each
6 Defendant’s business: the provision of on-demand rides. Each Defendant is a transportation
7 company that sells on-demand rides to its customers, i.e., its Passengers, who book and pay for
8 such rides through the Defendant’s App.

9 60. Drivers provide the on-demand ride. They are an integrated and essential part of each
10 Defendant’s transportation business. The immediate availability and temporal convenience of an
11 on-demand ride is the service that each Defendant sells to its Passengers.

12 61. Each Defendant publicly holds itself out to the public as a transportation company in
13 the business of selling on-demand rides.

14 62. Lyft has trademarked the slogan, “Your Friend with a Car.” Lyft advertises: “Get a
15 Ride Whenever You Need One”; “A ride in minutes”; and “Our drivers are always nearby so you
16 can get picked up, on demand, in minutes.”

17 63. Uber has trademarked the slogan, “Everyone’s Private Driver.” Uber advertises: “We
18 built Uber to deliver rides at the touch of a button”; “Always the ride you want”; “Request a ride,
19 hop in, and go”; “Sign up to ride. Rides on demand”; and “Get a reliable ride in minutes, at any
20 time and on any day of the year.”

21 64. Each Defendant represents to Passengers that it prescribes the qualifications of
22 Drivers on its App, as well as standards for Drivers’ quality of services. Each Defendant bills its
23 Passengers directly for the entire amount of the on-demand ride, and each Defendant’s Passengers
24 pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with
25 the quality of the on-demand ride provided through Defendant’s App, they report that problem to
26 Defendant, and Defendant may refund or cancel the Passenger’s fare.

27 65. Each Defendant is financially integrated with and dependent on its Drivers. Each
28 Defendant only generates income for its ride-hailing business if its Drivers transport and provide

rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

66. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

67. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on-demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

68. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

1 further improve the rider experience.” (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019],
2 emphasis added.) The prospectus identifies a “key factor” affecting Lyft’s performance as
3 “*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace.”
4 (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft’s
5 business model, “Why Lyft Wins,” Lyft’s IPO prospectus definitively answers: because Lyft is
6 “Driver-Centric.” (Id., at p. 3.)

7 70. Uber’s prospectus for its 2019 IPO also describes how Drivers, and the labor they
8 furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not
9 mince words: “If we are unable to attract or maintain a critical mass of Drivers . . . our platform
10 will become less appealing to platform users, *and our financial results would be adversely*
11 *impacted* Any decline in the number of Drivers . . . using our platform *would reduce the*
12 *value of our network and would harm our future operating results.*” (See Uber SEC S-1, *supra*,
13 at pp. 29-30, emphasis added.) Uber’s business model begins and ends with its Drivers.

14 **C. Part C of the ABC Test (“independently established trade, occupation, or**
15 **business”)**

16 71. Each Defendant’s Drivers are not engaged in an independently established trade,
17 occupation, or business of the same nature as the work they perform for each Defendant. Driving
18 itself is not a distinct trade, occupation, or business.

19 72. When driving for each Defendant, Drivers are not engaged in their own transportation
20 business, but are instead driving Passengers and generating income for the respective Defendant.

21 73. There are no specialized skills or training necessary to drive passengers on a ride-
22 hailing service. Consequently, each Defendant permits Drivers without any such skills or training
23 to provide on-demand rides on its App. For example, both of Defendant’s largest ride-hailing
24 options, “Lyft” and “UberX,” permit Drivers to offer ride-hailing services with an ordinary
25 driver’s license and a personal vehicle.

26 74. Each Defendant provides its Drivers with a necessary tool and instrumentality to
27 perform their on-demand, ride-hailing services—its App.

1 75. Each Defendant's App is the exclusive means by which Passengers and Drivers can
2 connect to, request, and provide each Defendant's on-demand rides.

3 76. Each Defendant's Drivers generally invest little to no capital to drive for each
4 Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a
5 smartphone and a car.

6 77. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents
7 its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running
8 their own independent businesses.

9 78. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers'
10 earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate
11 of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and
12 advertising of each Defendant's brand.

13 79. The limited economic levers that each Defendant leaves to its Drivers, such as
14 whether to drive at busier times or for more hours, are not consistent with the level of decision-
15 making normally exercised by entrepreneurs or those operating their own independent businesses.

16 80. Each Defendant limits its Drivers' ability to freely decline and cancel rides that
17 Drivers think will be unprofitable.

18 81. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus
19 to gauge their potential earnings based on demand for their services.

20 82. Each Defendant limits its Drivers' ability to share their accounts with other Drivers,
21 thereby curtailing its Drivers' ability to individually expand their business offerings.

22 83. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting
23 the ability of its Drivers to market themselves independently for repeat rides outside of
24 Defendant's App.

25 84. Each Defendant limits its Drivers' ability to take advantage of its App's financial
26 incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it
27 invites to participate in various, time-limited financial incentives that, for example, reward
28 Drivers for driving longer, or for driving at certain times and places. These financial incentives

1 are targeted to individual Drivers based on each Defendant's own opaque criteria as implemented
2 by the algorithmic decision-making engines in its App. By selecting which Drivers will be
3 invited to participate in which financial incentives and on what individualized terms, each
4 Defendant, in effect, chooses which Drivers are financial "winners" and "losers." Each
5 Defendant as the employer, not the Driver as an "entrepreneur," determines the Driver's earnings.

6 85. Each Defendant controls its Drivers' ability to earn compensation via its App, making
7 trade-offs between its Drivers' earnings and the price each Defendant charges to Passengers to the
8 benefit of each Defendant's profit.

9 86. Lyft describes these trade-offs in its 2019 annual SEC report reporting that "changes"
10 made by Lyft "may be viewed positively from one group's perspective (such as riders)" and
11 "negatively from another's perspective such as (drivers)." (See Lyft SEC 10-K, *supra*, at p. 24.)

12 87. Uber's SEC filings describe how the "greatest impact" on Uber's Take Rate (the
13 company's "take" on the difference between the Passenger's fare on a ride and what the ride-
14 hailing company pays out to the Driver) has "historically" come through Uber's unilateral
15 "adjustments to Driver incentives." (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO
16 prospectus, Uber freely admits the control it exerts over its Drivers' earnings—and the fact that
17 Uber's own profit comes at its Drivers' expense: "[A]s we aim to reduce Driver incentives to
18 improve our financial performance, we expect Driver dissatisfaction will generally increase."
19 (*Id.*, at p. 30.)

20 **IV. DEFENDANTS' UNLAWFUL MISCLASSIFICATION OF DRIVERS** 21 **RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.**

22 88. It is evident that neither Uber nor Lyft can meet their burden of showing that their
23 Drivers are independent contractors under California's ABC test for misclassification as adopted
24 in *Dynamex*, *supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test,
25 Defendants exercise control over their Drivers through their Apps, which, in combination with
26 their policies, function like algorithmic managers that effectively supervise Defendants' Drivers
27 like human managers. Under Part B of the ABC test, Drivers perform services within
28

1 Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC
2 test, Defendants cannot show that Drivers have established independent businesses.

3 89. Uber claims that “Drivers are at the heart of our service” and Lyft claims that Drivers
4 are “what makes Lyft ... Lyft.” But by misclassifying their Drivers, Defendants have devised an
5 unlawful business model that denies these very same Drivers the protections and benefits they
6 have rightfully earned as employees, and thereby gained an unlawful and unfair competitive
7 advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers,
8 undermines law-abiding competitors, evades Defendants' responsibility to contribute their share
9 as employers into the State's social insurance programs, and harms taxpayers who are often called
10 upon to address the negative consequences to Drivers and their families of Defendants'
11 exploitative employment practices.

12 **A. Defendants' unlawful misclassification deprives Drivers of their rights as**
13 **employees.**

14 90. Defendants' misclassification of their Driver workforce has allowed Defendants to
15 gain an unlawful competitive advantage over their competitors by circumventing the protections
16 and benefits that the law requires employers to provide to their employees. The laws violated by
17 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
18 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
19 benefits, and social insurance programs.

20 **1. Minimum Wages**

21 91. The law requires Drivers to be paid the applicable state or local minimum wage for
22 each hour worked, regardless of the compensation formula or method.

23 92. Defendants do not guarantee their Drivers a minimum wage under state and local
24 laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance
25 of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic
26 pricing pay surges, base rates, and minimum fares.

27 93. Defendants do not pay their Drivers for all their hours worked. Examples where each
28 Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

1 cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to
2 and returning from rides, and time spent logged on and monitoring each Defendant's App for ride
3 requests. Defendants cannot provide on-demand rides without the performance of these tasks.

4 94. Defendants have failed—and continue to fail—to meet their minimum wage
5 obligations with respect to their Drivers, including hours that are entirely unpaid and hours that
6 are paid at less than the applicable minimum wage.

7 **2. Overtime Wages**

8 95. The law requires Drivers to be paid the applicable overtime rate of pay—one-and-
9 one-half times or two times the Drivers' regular rate of pay—for all hours worked in excess of
10 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
11 seventh consecutive day of work in a workweek.

12 96. Defendants do not pay their Drivers overtime as required by law, despite the fact that
13 Drivers working overtime help Defendants to ensure the steady and constant supply of rides on
14 which Defendants' businesses depend.

15 97. Defendants have failed—and continue to fail—to meet these overtime pay obligations
16 with respect to their Drivers.

17 **3. Business Expenses**

18 98. The law requires Drivers to be paid or reimbursed for the necessary expenses in
19 performing their work.

20 99. Drivers pay for business expenses they incur in the course and scope of performing
21 their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear,
22 registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated
23 with using Defendants' Apps.

24 100. These expenses are substantial. For example, the Internal Revenue Service publishes
25 a "standard mileage rate," which currently estimates the cost of operating a vehicle for business
26 purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their
27 vehicles, without any reimbursement for this significant, work-related expense.
28

101. Defendants impose all the costs of operating the vehicles necessary to perform their ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business without them.

102. Defendants have failed—and continue to fail—to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

103. The law requires Drivers to be provided with one 30-minute duty-free meal period for a work period of more than five hours, and a second 30-minute duty-free meal period for a work period more than ten hours. The law further requires Drivers to be provided a ten-minute, paid, off-duty rest period for every four hours worked, or major fraction thereof. Authorized or required rest period time shall be counted as paid time worked.

104. Defendants do not provide for off-duty meal periods and do not authorize or permit paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the employee's regular rate of compensation for each failure, as required by law.

105. Defendants have failed—and continue to fail—to meet these meal and rest period obligations with respect to their Drivers.

5. Wage Statements

106. The law requires Drivers to receive regular and complete itemized wage statements from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly wages, piece rate wages, rest period pay, and nonproductive time pay.

107. Defendants do not provide Drivers with itemized wage statements in conformance with California law.

108. Defendants have failed—and continue to fail—to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

109. The law requires Drivers to be provided paid sick leave benefits as specified under California law and various local laws, including, but not limited to, the Los Angeles, San Diego, and San Francisco sick leave ordinances.

110. The law currently requires Drivers in San Francisco to receive health care expenditures of \$3.08 per hour. In recent years the rate has ranged between \$2.53 and \$3.08 per hour.

111. Drivers do not accrue the paid sick leave benefits or receive the health care expenditures from Defendants that employers are required to provide under state and local law.

112. Defendants have failed—and continue to fail—to meet these sick leave and health care expenditure obligations with respect to their Drivers.

7. Social Insurance Programs

113. The law requires Defendants to remit contributions or take other mandatory actions under the State’s social insurance programs, including, but not limited to, unemployment insurance, disability insurance, paid family leave, workers’ compensation, and San Francisco’s Paid Parental Leave Ordinance.

114. These programs are intended to provide wage replacement and other benefits in the event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to care for a family member, or is otherwise unable to work.

115. Defendants have failed—and continue to fail—to meet these social insurance program obligations with respect to their Drivers.

B. Defendants’ unlawful misclassification harms law-abiding competitors and would-be competitors.

116. Defendants’ unfair and unlawful treatment of their Drivers also confers an unfair advantage on Defendants over their law-abiding competitors and would-be competitors. Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full compensation and benefits they earn as employees to offer their ride-hailing services at an artificially low cost, decimating competitors and generating billions of dollars in private investor wealth off the backs of vulnerable Drivers.

117. Defendants’ misclassification of their Drivers allows both companies to unlawfully reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they

1 lawfully classified and compensated their Drivers as employees, including reimbursing Drivers
2 for their vehicle maintenance and fuel expenses.

3 118. Because driver compensation, along with vehicle maintenance and fuel expenses,
4 generally constitutes the lion's share of operating costs for a car service, Defendants' illicit
5 savings allow them to gain an out-sized competitive advantage over other transportation
6 providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and
7 vehicle costs of running a transportation service from well-resourced Defendants onto their
8 under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a
9 substantial competitive disadvantage.

10 119. In addition to avoiding paying Drivers for the full compensation and reimbursements
11 they earn as employees under state and local wage and hour laws, Defendants also avoid paying
12 their share of state and local payroll taxes and workers' compensation insurance premiums.

13 120. On information and belief, the illicit cost savings Defendants have reaped as a result
14 of avoiding employer contributions to state and local unemployment and social insurance
15 programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the
16 full compensation and benefits they are guaranteed under law as employees pushes the total
17 amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be
18 competitors who cannot enter the market—even higher.

19 **FIRST CAUSE OF ACTION**

20 **INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF** 21 **BUSINESS AND PROFESSIONS CODE SECTION 17200** 22 **(Against all Defendants)**

23 121. The People reallege and incorporate by reference each allegation contained in the
24 above paragraphs as if fully set forth herein.

25 122. Defendants have engaged, and continue to engage, in acts or practices that are
26 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
27 section 17200 of the Business and Professions Code. These acts or practices include, but are not
28 limited to, the following:

- a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;
- b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently \$13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);
- c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently \$15.59 per hour);
- d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently \$14.25 per hour);
- e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently \$13.00 per hour);
- f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);
- g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;
- h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;
- i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

Communication: Public Comment Supplements (PUBLIC COMMENT)

- j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;
- k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;
- l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;
- m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;
- n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;
- o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;
- p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;
- q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;
- r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;
- s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;
- t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;
- u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

Communication: Public Comment Supplements (PUBLIC COMMENT)

v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C. Wage Order 9-2001, and other local employee protection laws.

123. Each Defendant's misclassification of its Drivers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provision of Labor Code section 2750.3, and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3) (Against all Defendants)

124. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

125. A.B. 5 permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in excess of 750,000, or by a City Attorney in a city and county.

126. Each Defendant continues to misclassify its Drivers as independent contractors.

127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to prevent the continued misclassification of each Defendant's Drivers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, that each Defendant, their successors, agents, representatives, employees, and all persons who act in concert with each Defendant, be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

- 1 2. Pursuant to Business and Professions Code section 17203, that the Court enter all
2 judgments as may be necessary to restore to any person in interest any money or property that
3 may have been acquired by violations of Business and Professions Code section 17200 as may be
4 proved at trial;
- 5 3. Pursuant to Business and Professions Code section 17206, that each Defendant be
6 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions
7 Code section 17200 et seq., as proven at trial;
- 8 4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
9 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
10 perpetrated against a senior citizen or disabled person, as proven at trial;
- 11 5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from
12 continuing to misclassify its Drivers as independent contractors;
- 13 6. That the People recover their costs of suit; and
- 14 7. Such other and further relief that the Court deems appropriate and just.
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Communication: Public Comment Supplements (PUBLIC COMMENT)

1 Dated: May 5, 2020

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 MICHAEL L. NEWMAN
5 Senior Assistant Attorney General
6 SATOSHI YANAI
7 Supervising Deputy Attorney General
8 MARISA HERNÁNDEZ-STERM
9 MANA BARARI
10 R. ERANDI ZAMORA-GRAZIANO



11 MINSU D. LONGIARU
12 Deputy Attorneys General
13 *Attorneys for the People of the State of*
14 *California ex rel. Xavier Becerra, Attorney*
15 *General*

16 MICHAEL N. FEUER
17 City Attorney, City of Los Angeles
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21 Deputy City Attorney

22 MARA W. ELLIOTT
23 City Attorney, City of San Diego
24 MARK ANKCORN
25 Chief Deputy City Attorney
26 KEVIN B. KING
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28 Deputy City Attorneys

DENNIS J. HERRERA
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Chief Deputy City Attorney
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MATTHEW D. GOLDBERG
Deputy City Attorneys

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Communication: Public Comment Supplements (PUBLIC COMMENT)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

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

APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

RECOMMENDATION(S)

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

REPORT NARRATIVE:

The purpose of this City Council report is to request authorization for the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection Program (Attachment 1).

Since 1993, the City has met its obligation to provide for household hazardous waste disposal by participating in the Countywide Collection Program. This popular program provides City residents with the opportunity to participate in several collection events each month. The permanent collection center in San Martin has improved the convenience associated with these services. It is estimated that over 1,500 Morgan Hill households will participate in a collection event in the coming fiscal year.

In 2018, the Council authorized the City Manager to execute a three-year Countywide Household Hazardous Waste Agreement. Because this agreement includes the collection schedule for the year and the augmentation amount elected by the City, it requires an annual amendment. The First Amendment with the Fiscal Year 2019-20 collection schedule was approved by the Council last year. The sole purpose of this item is to approve the City's execution of the Second Amendment to the Agreement with the FY 2020-21 schedule and updated augmentation amount. Based on the City's experience, an annual augmentation of \$60,000 should ensure that all Morgan Hill residents desiring to participate in the program will be allowed to do so. This is identical to last year's amount and reflects expected program usage. Note that this augmentation exclusively includes funds generated by a Countywide fee and anticipates no expenditures from the General Fund.

COMMUNITY ENGAGEMENT: Inform

The recommended action is an extension of a long-standing program with no changes proposed so no engagement activities were conducted prior to presenting the amendment for Council consideration. Should the Second Amendment be approved, staff will continue to inform the public about the availability of the County program.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the Second Amendment and direct staff to further evaluate the provision of these services and the recommended augmentation amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The current agreement was approved by the City Council on May 2, 2018 (Attachment 3) and the First Amendment was approved on June 5, 2019 (Attachment 2). The Council has historically acted annually on either an agreement or an amendment to the agreement for over 20 years.

FISCAL AND RESOURCE IMPACT:

It is estimated that providing services to Morgan Hill residents participating in the County program will cost approximately \$110,000 in Fiscal Year 2020-21. Since the Countywide AB939 fee revenues credited to Morgan Hill for this purpose should total approximately \$156,000, it is not anticipated that any funding from the City's General Fund will need to be expended for this service. Any AB939 fee revenues remaining in the City's credit will be refunded to the City for use in promoting the program. The refunded amounts are deposited into the General Fund (010), GL#: 010.37706.

CEQA (California Environmental Quality Act):

Categorical Exemption

Approval of the Second Amendment is categorically exempt from environmental review under the Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Morgan Hill 2nd Amendment FY 2021
2. Executed First Amendment
3. Executed Morgan Hill HHW Agreement FY19-21

SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on June 19, 2018, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive, or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$54,700.00 to the Countywide HHW Program during Fiscal Year 2018-2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes COUNTY to use CITY's Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000.00 to the Countywide HHW Program during Fiscal Year 2019-2020 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000 to the Countywide HHW Program during Fiscal Year 2020-2021 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-2, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding

portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

//

2. Attachment C-2 "HHW Schedule For Collection Events for Fiscal Year 2020/2021" attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this Second Amendment to the AGREEMENT effective as of the last date shown below:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

Signature:

Signature:

Jeffrey V. Smith
County Executive

Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

Stephanie Safdi
Deputy County Counsel

Date: _____

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

ATTACHMENT C - 2

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2020/2021

HHW SCHEDULE FOR FISCAL YEAR 2020/2021

2020/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Wed,Thurs	1,2	San Martin	Permanent	
	Wed,Thurs	1,2	San Jose	Permanent	
	Fri,Sat	3,4	No Event	No Event	4th OF JULY WEEK
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
August	Fri, Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Saturday	15	Mountain View	Temporary	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27, 28,29	San Jose	Permanent	
September	Thurs, Fri	3,4	San Martin	Permanent	
	Thurs, Fri	3,4	San Jose	Permanent	
	Saturday	5	No Event	No Event	LABOR DAY WEEKEND
	Thurs, Fri	10,11,12	San Jose	Permanent	
	Saturday	12	Santa Clara	Temporary	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
October	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
November	Fri, Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	No Event	No Event	THANKSGIVING
December	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	No Event	No Event	CHRISTMAS
	Thursday	31	San Jose	Permanent	

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

HHW SCHEDULE FOR FISCAL YEAR 2020/2021-continued					
2021/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri, Sat	1,2	No Event	No Event	NEW YEAR's DAY
	Fri, Sat	8,9	San Martin	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	San Jose	
	Thurs,Fri,Sat	14,15,16	San Jose	San Jose	
	Saturday	16	Sunnyvale	Temporary	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
	Saturday	30	Santa Clara	Temporary	
February	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
March	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
April	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs, Fri,Sat	8,9,10	San Jose	Permanent	
	Saturday	10	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Saturday	24	Santa Clara	Temporary	
May	Fri, Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs, Fri	27,28	San Jose	Permanent	
	Saturday	29	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Saturday	19	Milpitas	Temporary	TBD
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	

*SUBJECT TO CHANGE

4/6/2020

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

**FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD
HAZARDOUS WASTE COLLECTION PROGRAM**

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on July 1, 2018, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive, or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$54,700.00 to the Countywide HHW Program during Fiscal Year 2018-2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes COUNTY to use CITY's Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000 to the Countywide HHW Program during Fiscal Year 2019-2020 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

//

2. Attachment C-1 "HHW Schedule For Collection Events for Fiscal Year 2019/2020" attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this First Amendment to the AGREEMENT on the last date shown below:

COUNTY OF SANTA CLARA

Signature: _____

Sylvia Gallegos
Deputy County Executive

Date: _____

CITY OF MORGAN HILL

Signature: _____

Name: Christina Turner
Title: City Manager

Date: 6/27/19

APPROVED AS TO FORM AND LEGALITY

Michael Rossi
Lead Deputy County Counsel

Date: _____

APPROVED AS TO FORM:

Cynthia Hasson, Assistant City Attorney

Attachment: Executed First Amendment [Revision 1] (2735 : 2nd HHW Amend 2020)

ATTACHMENT C - 1

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2019/2020

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Thurs,Fri,Sat	4,5,6	No Event	No Event	4th OF JULY WEEK
	Fri,Sat	12,13	San Martin	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
August	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Saturday	10	Mountain View	Temporary	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs, Fri	29,30	San Jose	Permanent	
	Saturday	31	No Event	No Event	LABOR DAY WEEKEND
September	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Fri,Sat	6,7	West Valley	Temporary	TBD
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
	Saturday	28	Santa Clara	Temporary	
October	Fri,Sat	4,5	San Martin	Permanent	
	Saturday	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
November	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	No Event	No Event	THANKSGIVING
December	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	No Event	No Event	CHRISTMAS
2020/Jan	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	San Jose	
	Thurs,Fri,Sat	16,17,18	San Jose	San Jose	
	Saturday	18	Sunnyvale	Temporary	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2019/2020 **-continued**

2020/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
February	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
March	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
April	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	TBD
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	
May	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	30,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri	21,22	San Jose	Permanent	
	Saturday	23	No Event	No Event	MEMORIAL DAY WEEKEND
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
June	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Milpitas	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	

*SUBJECT TO CHANGE

Rev. 4/24/19

Attachment: Executed First Amendment [Revision 1] (2735 : 2nd HHW Amend 2020)

127-04-18-025

AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

This Agreement is made by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) on the 19th day of June, 2018.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring HHW to any Household Hazardous Waste Collection Event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.60 in FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021) on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected from any location within the county by a solid waste hauler operating

pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose, CA 95133.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

The projected AB939 HHW Implementation Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A, attached hereto and incorporated herein.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose. Estimated San Jose Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs are allocated on a per household basis and San Jose Facility Use Surcharge is allocated on a participation basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of locally produced materials; and,
- Conducting and supporting outreach and publicity to attain the 4% goal of household participation.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ♦ *San Martin, 13055 Murphy Avenue, San Martin*
- ♦ *San Jose, 1608 Las Plumas, San Jose*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. This program may, at the sole discretion of CITY, be subsidized by participating jurisdictions using outside funding not associated with AB939 HHW Fee. For purposes of definition, CESQG as defined is equivalent to Very Small Quantity Generator (VSQG) in 40 CFR 262.14.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

B) NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization as established in Public Resources Code Section 41904, is a nonprofit as defined in Section 501(c) (3) of the United States Internal Revenue Code, or a distinct operating unit or

division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218, as amended from time to time, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ 54,700 to the Countywide HHW Program during Fiscal Year 2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2019 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this agreement, COUNTY may seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, retail take-back collection and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants and the Oil Payment Program, from the California Department of Resources Recycling and Recovery (CalRecycle). The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion.

Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, County Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15, 2019. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or

arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of <u>Morgan Hill</u>	City Representative	<u>Christina Turner</u>
	Representative's Title	<u>City Manager</u>
	City Address	<u>City of Morgan Hill</u>
		<u>17525 Peak Ave.</u>
		<u>Morgan Hill, CA 95037</u>

Santa Clara County

Director
Consumer and Environmental Protection Agency
1553 Berger Drive
San Jose, CA 95112

34. CONTRACT EXECUTION

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

Attachments:

- A Projected Fiscal Years 2019, 2020, and 2021 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021
- C HHW Schedule of Collection Events for Fiscal Year 2019
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

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Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR
COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION
PROGRAM on the dates as stated below:

“COUNTY”

S. Joseph Simitian, President
Board of Supervisors

Date: JUN 19 2018

Signed and Certified that a copy of this document
has been delivered by electronic or other means to
the President, Board of Supervisors.

ATTEST:

JUN 19 2018
MEGAN DOYLE Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
 4/23/2018
16FE0EECFBF74C6...
Javier Serrano Date
Deputy County Counsel

“CITY”

CITY/TOWN OF Morgan Hill,
A municipal corporation

By: _____

Title: City Manager

Date: 6/8/18

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

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Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Attachment A: Projected Fiscal Years 2019-2021 Annual HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$2.99 per HH	SJ Facility \$6.83 Surcharge	Variable Cost \$62 per Car	Abandoned Waste Disposal Cost \$0.05 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	17,832	713.28	38,979.51	\$ 101,346.73	\$ 53,317.68	\$ 6,718.88	\$ 44,223.36	\$ 891.60	\$ (3,804.80)	\$ 26,104.34	1,073	98
Cupertino	21,064	842.56	44,875.46	\$ 116,676.20	\$ 62,981.36	\$ 3,06.12	\$ 3,720.00	\$ 1,053.20	\$ 48,615.52	\$	60	4
Gilroy	16,258	650.32	49,766.41	\$ 129,392.67	\$ 48,611.42	\$ 1,075.34	\$ 40,319.84	\$ 812.90	\$ 38,573.17	\$ 15,294.16	897	151
Los Altos	11,660	466.40	18,006.34	\$ 46,816.48	\$ 34,863.40	\$ 4,937.12	\$ 28,916.80	\$ 583.00	\$ (22,483.84)	\$ 70,143.24	1,235	72
Los Altos Hills	3,108	124.32	3,164.89	\$ 8,228.71	\$ 9,292.92	\$ 871.26	\$ 7,707.84	\$ 155.40	\$ (9,798.70)	\$ 15,780.46	221	121
Los Gatos	13,289	531.56	25,570.37	\$ 66,482.96	\$ 39,734.11	\$ 7,974.75	\$ 32,956.72	\$ 664.45	\$ (14,847.07)	\$ 57,896.15	1,226	1,161
Milpitas	21,532	861.28	74,523.39	\$ 193,760.81	\$ 64,380.68	\$ 3,987.38	\$ 53,399.36	\$ 1,076.60	\$ 70,916.80	\$ 5,351.84	948	58
Monte Sereno	1,311	52.44	1,207.90	\$ 3,140.54	\$ 3,919.89	\$ 957.60	\$ 3,251.28	\$ 65.55	\$ (5,053.78)	\$ 11,285.40	153	141
Morgan Hill	14,415	576.60	51,502.27	\$ 133,905.90	\$ 43,100.85	\$ 1,875.95	\$ 35,749.20	\$ 720.75	\$ 52,459.15	\$ 54,639.20	1,458	27
Mountain View	35,595	1,423.80	54,389.71	\$ 141,413.25	\$ 106,429.05	\$ 5,572.91	\$ 88,275.60	\$ 1,779.75	\$ (60,644.06)	\$ 73,899.66	1,638	81
Palo Alto	29,124	0.00	43,478.06	\$ 113,042.96				\$ 1,456.20	\$ 111,586.76			
San Jose	332,574	13,302.96	683,263.56	\$ 1,776,485.26	\$ 994,396.26	\$ 116,026.35	\$ 824,783.52	\$ 16,628.70	\$ (175,349.57)	\$ 436,037.25	17,508	16,99
Santa Clara	46,535	1,861.40	166,527.00	\$ 432,970.20	\$ 139,139.65	\$ 1,062.63	\$ 115,406.80	\$ 2,326.75	\$ 166,034.37	\$ 82,450.70	3,191	1,47
Saratoga	11,226	449.04	19,744.70	\$ 51,336.22	\$ 33,565.74	\$ 5,439.47	\$ 27,840.48	\$ 561.30	\$ (16,070.77)	\$ 42,275.69	872	79
Sunnyvale	58,308	2,332.32	110,483.61	\$ 287,257.39	\$ 174,340.92	\$ 6,687.49	\$ 144,603.84	\$ 2,915.40	\$ (41,290.26)	\$ 63,029.32	2,683	981
Unincorporated	18,538	741.52	42,334.16	\$ 110,068.82	\$ 55,428.62	\$ 2,417.34	\$ 45,974.24	\$ 926.90	\$ 5,321.51	\$ 29.76	742	35
Total	652,369	24,929.80	1,427,817.34	\$ 3,712,325.08	\$ 1,863,502.55	\$ 174,910.78	\$ 1,497,128.88	\$ 32,618.45	\$ 144,164.42	\$ 954,237.18	33,904	25,62

Notes: No of HH based on 1/1/17 estimates. Disposal tonnage is based on FY2016-2017 actual. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2016-2017 actual participation.

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Attachment B: Estimated Annual HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021

FIXED COST		
Staff Salary and Benefits	.5 HMPM, Sr. HMS, 3 HMTs, Acct II, Sr MA, AMA, .8 OSIII,	\$1,210,647
County Admin Overhead		\$242,129
County Counsel		\$13,000
Phones and Communications		\$10,100
Facilities Lease Costs	San Jose	\$174,911
Vehicle Costs		\$32,500
Office Supplies and postage		\$1,825
Maintenance, Software		\$27,000
HHW Hotline		\$38,500
Garbage & Utilities		\$34,750
Membership & Dues		\$10,000
Training & Conference		\$4,600
Safety Wear		\$11,000
Printing		\$5,800
Other Services & Supplies		\$46,500
ESTIMATED ANNUAL TOTAL		\$1,863,262

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2018-2019***

2018/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Saturday	21	Sunnyvale	Temporary	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
August	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Mountain View	Temporary	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
September	Thurs,Fri,Sat	30,31,1	No Event	No Event	LABOR DAY WEEKEND
	Fri,Sat	7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
October	Saturday	29	Santa Clara	Temporary	
	Fri,Sat	5,6	San Martin	Permanent	
	Saturday	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
November	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	No Event	No Event	THANKSGIVING
December	Fri,Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	No Event	No Event	

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION
EVENTS FOR FISCAL YEAR 2018-2019 (Continued)**

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri,Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	San Jose	
	Thurs,Fri,Sat	17,18,19	San Jose	San Jose	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
February	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
March	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	28,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs	28	San Jose	Permanent	
	Fri & Sat	29 & 30	No Event	No Event	
					Caser Chavez Day
April	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Saturday	TBD	Los Altos	Temporary	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Saturday	27	Santa Clara	Temporary	
May	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri	23,24	San Jose	Permanent	
	Saturday	27	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Saturday	22	Milpitas	Temporary	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	

*SUBJECT TO CHANGE

11/16/2017

ATTACHMENT D: COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. Purpose

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a

centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2D (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
- 4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Rev. 09/2016

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

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CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Chris Ghione, Public Services Director
APPROVED BY: City Manager

APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

RECOMMENDATION(S)

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

The Covid-19 crisis and resulting shelter-in-place orders for the State of California and Santa Clara County have required significant changes in the overall City operations, including the closure of all the City owned recreation facilities. The City partners with the YMCA of Silicon Valley for operations of the Centennial Recreation Center. On March 17, the closure of the facility effectively reduced operations to providing minimal staffing for maintenance of the facility, support for the pickup of senior lunches and the CRC virtual membership. This closure resulted in furlough of most staff currently working at the facility for both the YMCA and City.

The City and YMCA have shared in a risk/reward scenario based on both expenses and revenues associated with operating the CRC. With the closure, both the revenues and expenses have gone to almost zero. City and YMCA staff agree that the closure of the facility and associated loss of revenue and expenses was not anticipated by the City or the YMCA during the development of the partnership agreement and believe the process of determining the ultimate risk/reward payment component is unclear. Additionally, developing a budget scenario for the next fiscal year with a risk/reward component is not feasible without understanding the future of the Covid-19 crisis and current and future shelter-in-place orders.

For the reasons outlined in this report, staff is recommending approval of an amendment to the agreement eliminating the risk/reward component for the current year and FY 2020-21, which is the final year of the agreement. The amendment will result in the City paying the YMCA only for expenses incurred in operating the CRC. The

amendment also requires the City and YMCA to review and update the partnership budget prior to December 31, 2020 based on known conditions relating to Covid-19.

The YMCA of Silicon Valley has been a long-standing partner with the City of Morgan Hill and is experiencing the same financial difficulties as the City, and the Mt. Madonna YMCA serving the South County has been significantly impacted. This amendment will support the ongoing partnership of the City and YMCA during these difficult times. The City and YMCA are working towards the next phase of the partnership as the agreement is set to expire in June 2021.

COMMUNITY ENGAGEMENT: Not Applicable

No community engagement has occurred for this item, as the amendment was negotiated between the City and YMCA staff.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve this amendment. This will likely result in prolonged legal review in determining responsibility relating to the risk/reward component of the agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the original agreement with the YMCA for operating the CRC in 2006. The Council has approved amending the agreement five times previously, including two 5-year extensions on the term of the agreement.

FISCAL AND RESOURCE IMPACT:

It is estimated that YMCA expenses will total \$1,290,000 for FY 2019-20, approximately \$430,000 below the budget. It is estimated that CRC membership revenue for FY 2019-20 will total \$3,550,000, approximately \$1,210,000 below budget. Under the proposed amendment there will be no risk/reward payment associated with this revenue and expense. For FY2020-21, the amendment would provide for the City to fund the YMCA costs in operating the CRC, which will be determined through the budget process.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. CRC 6th Amendment Signed

**SIXTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This SIXTH AMENDMENT TO AGREEMENT is made this _____ day of _____, 20____, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the Centennial Recreation Center and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment").

WHEREAS, CITY and YMCA entered into the Fourth Amendment to the Original Agreement on September 21, 2016 ("Fourth Amendment").

WHEREAS, CITY and YMCA entered into the Fifth Amendment to the Original Agreement on December 22, 2016 ("Fifth Amendment") and a Side Letter on March 8, 2018. The Original Agreement, First Addendum, Second Addendum, Third Amendment, Fourth Amendment, Fifth Amendment and Side Letter are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, due to the March 16, 2020 Santa Clara County Public Health Department Order to shelter in place, the Centennial Recreation Center has been generally closed to the public.

WHEREAS, closure of the facility and associated loss of revenue was not anticipated by the City or the YMCA at the time it entered into the Original Agreement or Amendments.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Paragraph 5.3 shall be amended and replaced in its entirety by the following:

The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including but not limited to a significant unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled. For Fiscal Year 2020/21 the City and YMCA agree to update the CRC budget based on known conditions by December 31, 2020.

2. Paragraph 5.5 shall be amended and replaced in its entirety by the following:

As part of the annual budget and work plan adoption process the parties will agree on a method for separately accounting for fee based activities health and fitness, aquatics facility operations and non-fee based activities. For Fiscal Year 2019/20 and Fiscal Year 2020/21 no payments shall be made by either party in relation to net operating gain or loss.

3. Paragraph 13.2 is amended and replaced per the March 8, 2018 Side Letter in its entirety by the following:

The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

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//

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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/Deputy City Clerk_____
Michelle Bigelow_____
Print Name_____
Date:

APPROVED AS TO FORM:

City Attorney_____
Donald Larkin_____
Print Name_____
Date:_____
City Manager_____
Christina Turner_____
Print Name_____
Date:

YMCA of Silicon Valley

*Sandra B. Walker*By: *Sandra B. Walker*Title: *President / CEO*_____
Print Name and Title of Signer.

If Corporate: Chairman,

President or Vice President

Date: *May 12, 2020*_____
*Karla Jessup*By: *Karla Jessup*Title: *Chief Human Resources Officer*_____
Print Name and Title of Signer.

If Corporate: Secretary,

Assistant Secretary, Chief

Financial Officer or Assistant

Treasurer

Date: *May 12, 2020*

Attachment: CRC 6th Amendment Signed [Revision 2] (2738 : CRC Partnership Agreement Sixth Amendment)

126-04-06-003



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

March 8, 2018

YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051

Re: Side Letter to the Centennial Recreation Center Operating Agreement

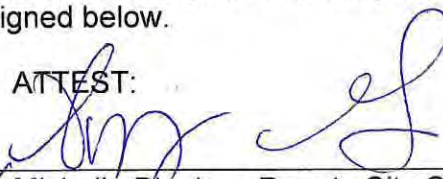
This is a Side Letter to that Operating Agreement, including all amendments thereto (hereinafter "Agreement"), initially entered into on June 29, 2006, between the City of Morgan Hill and YMCA of Silicon Valley (collectively, referred to as "the Parties") for operation of the Centennial Recreation Center. The Parties, without waiving any rights set forth in the Agreement, agree to delete the drug testing requirement by removing it from section 13.2 to read as follows:

13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis, ~~drug screen~~ and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

This Side Letter shall expire on June 30, 2021, concurrently with the expiration of the Agreement. Should the parties amend the Agreement prior to its expiration date, this Side Letter shall terminate, and the change to section 13.2 shall be incorporated into the amendment if appropriate.

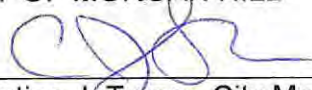
This Side Letter is not intended to and does not confer any rights or obligations on either party, and all terms and conditions of the Agreement, as amended, shall remain in full force and effect except as expressly set forth above. The Side Letter is effective upon the last date signed below.

ATTEST:

for 
Michelle Bigelow, Deputy City Clerk

Date: 4/12/18

CITY OF MORGAN HILL


Christina J. Turner, City Manager

Date: 4/10/18

APPROVED AS TO FORM:

for 
Donald A. Larkin, City Attorney

Date: 4-5-18

[Signatures Continued on Next Page]

Attachment: CRC 6th Amendment Signed [Revision 2] (2738 : CRC Partnership Agreement Sixth Amendment)

On behalf of YMCA of Silicon Valley, I consent to the above.

YMCA of Silicon Valley

Sandra B Walker

Title: Sandra Berlin Walker, President/CEO
Print Name and Title of Signer.

Date: March 14, 2018

**FIFTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This FIFTH AMENDMENT TO AGREEMENT is made this 22 day of December 2016, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the CRC and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment").

WHEREAS, CITY and YMCA entered into the Fourth Amendment to the Original Agreement on September 21, 2016 ("Fourth Amendment"). The Original Agreement, First Addendum, Second Addendum, Third Amendment and Fourth Amendment are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Section 18 shall be amended and replaced in its entirety by the following:

"18. Membership Reciprocity

18.1. Effective January 1, 2017, the CRC will no longer sell YMCA Silicon Valley ("YSV") memberships. Also effective January 1, 2017, CRC memberships will include the benefit of allowing CRC members access to all YSV locations and all YMCAs that have entered into a reciprocity agreement with the YSV ("Reciprocal YMCAs"). In exchange for this benefit, the City shall allow YMCA members who purchase memberships at YSV and Reciprocal YMCA locations to access the CRC at no additional charge. Use of the City's Aquatics Center is not included as part of reciprocal use.

18.2 The Parties agree that the membership reciprocity arrangement as outlined in Section 18 assumes equal use of YMCA facilities by CRC members and vice versa. Should use patterns indicate greater use of the CRC by YMCA members than CRC member use of YMCA facilities, the YMCA shall pay the City for each net member use (calculated as YMCA member uses of the CRC minus CRC member uses of the YMCA facilities) at the current inter-branch Day Pass rate of five dollars (\$5.00) per unit per visit. Conversely, the City will not pay the YMCA should use patterns indicate greater use of YMCA facilities by CRC members than YMCA member use of the CRC. Additionally, any YMCA member who regularly uses the CRC more than ten times per month *and* more than his or her home YMCA will be asked to transfer membership to the CRC. Any CRC member regularly using a specific YMCA more than ten times per month *and* more than the CRC will be asked to transfer membership to the YMCA. All reciprocal use of the CRC and YSV locations and Reciprocal YMCAs will be tracked by the YMCA. The YMCA will share use numbers with the City by the tenth day of each month. Payments (if applicable) to the City shall be made biannually.

18.3 CRC staff may set limits on attendance or restrict use of the CRC facility or programs for YMCA members in order to provide CRC members with priority use. YMCA staff may set limits on attendance or restrict use of YSV or Reciprocal YMCA facilities or programs for CRC members in order to provide YMCA members with priority use.

18.4 Both parties will monitor use and meet to evaluate and/or modify the terms of this reciprocity arrangement by June 30, 2017. Any modifications to this Section 18 shall be in writing signed by both parties. Notwithstanding Section 11 of this Agreement, both parties have the ability to terminate the membership reciprocity provisions and all terms outlined in this Section 18 by providing written notice to the other party ninety (90) days ahead of the intended termination date.

SIGNATURES ON THE FOLLOWING PAGE

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

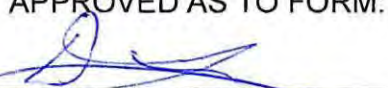
ATTEST:


 City Clerk/Deputy City Clerk

 for
 Michelle Wilson
 Print Name

Date: 12/22/16

APPROVED AS TO FORM:


 City Attorney

 Donald Larkin
 Print Name

Date: 12/20/2016

CITY OF MORGAN HILL


 City Manager

 for
 Steve Rymer
 Print Name

Date: 12/22/16

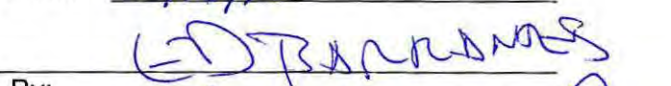
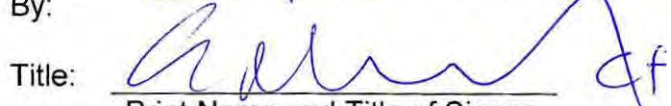
YMCA of Silicon Valley

By:

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

Date: 12/16/16

By:


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

Date: 12/19/2016

126-04-06-003

**FOURTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This FOURTH AMENDMENT TO AGREEMENT is made this 21st day of September 2016, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the Centennial Recreation Center and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment"). The Original Agreement, First Addendum, Second Addendum, and Third Amendment are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Section 18 shall be added to the Agreement to read in its entirety:

"18. Membership Reciprocity

18.1. Effective June 1, 2016, the CRC will sell YMCA Silicon Valley ("YSV") Memberships, which shall allow CRC members access to all other YMCA of the Silicon Valley locations. The City shall retain all monthly membership revenue and processing fees associated with the sale of YSV Memberships at the CRC.

In exchange for this revenue, the City shall allow YSV Members who purchase YSV Membership at YSV branch locations to access the CRC at no additional charge.

18.2 Effective June 1, 2016, other YSV branch locations shall be allowed to sell a Morgan Hill Aquatics Center Membership to members who possess a YSV Membership. This additional membership shall provide YSV Members access to the Morgan Hill Aquatics Center at no additional charge. The YMCA will retain ten percent (10%) of the monthly membership revenue for Morgan Hill Aquatics Center Memberships to cover administrative costs and shall pay the City the remaining ninety percent (90%) of revenue. Payments shall be made on a monthly basis.

18.3 CRC Members will be allowed to access YMCA locations for a reduced day fee rate. Likewise, members of other individual YSV Branch locations will be able to access the CRC (not the Aquatics Center) for the same reduced day fee rate.

18.4 The Parties agree to meet to evaluate the sale and use of YSV Memberships prior to January 31, 2017 and again prior to June 30, 2017. This arrangement assumes fairly equal use of other YMCA facilities by CRC members and vice versa. Should use patterns indicate a net difference in use greater than twenty five percent (25%) over the twelve (12) month period (YSV member use minus CRC YSV member use, divided by the lesser of the two), the Parties agree to amend this Agreement to adjust payments or use to more appropriately compensate for member use patterns.

18.5 The initial rates at the CRC for YSV memberships and day fees for YSV branch members shall be:

	Enrollment Fee	CRC Member Monthly Rates (Resident/ Non-Resident)	YSV Enrollment Fee	YSV Add-On Monthly Rates (Resident/ Non-Resident)
Adult Membership	\$50	\$63/\$67	\$55	\$27/\$23
Adult YSV Upgrade (no kids)			\$40	\$12/\$8
Adult Senior YSV Upgrade			\$40	\$7/\$3
Family Membership	\$75	\$90/\$96	\$75	\$38/\$32
Family YSV Upgrade (no kids)			\$60	\$23/\$17
Adult Plus	\$0	\$46/\$50	\$90 (Must upgrade family membership to YSV 3 adults membership)	\$30/\$20
Couple Senior / Special Hours	\$75	\$72/\$78	Must upgrade to adult, family or YSV senior membership.	
Senior / Special Hours	\$50	\$43/\$47	Must upgrade to adult, family or YSV senior membership.	
Senior YSV Upgrade (not special hours)			\$40	\$27/\$23
Youth/Teen	\$50	\$28/\$32	\$0	\$12/\$8
Core Class	\$0	FREE		
Specialty Class	\$0	Member Fee/Member Fee +\$10		
Swim Lessons	\$0	Member Fee/Member Fee + \$10		
Daily CRC Member Use at other YSV Locations		\$5 per visit per membership		
Daily YSV Member Use at CRC		\$5 per visit per membership		
YSV Aquatics Center Membership Add-On				\$25 (one member, any age), \$50 (2 or more members, any age)

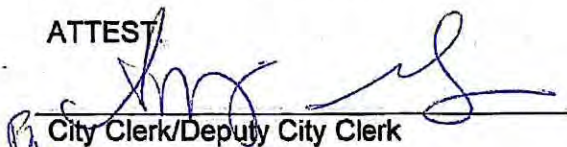
18.6 The Parties agree that adjustment to fees outlined in Section 18.5 may be necessary to maintain consistency between CRC fees and YMCA fees for YSV membership. The City Manager has authority to adjust fees outlined in Section 18.5. This authority does not include other general CRC fees for membership and daily rates, which must be approved by the City Council.

18.7 Both Parties have the ability to terminate membership reciprocity and all terms outlined in Section 18 of this Agreement by providing written notice to the other Party ninety (90) days ahead of the intended termination date.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:


 City Clerk/Deputy City Clerk

Michelle Wilson

Print Name

Date: 9/22/16

APPROVED AS TO FORM:

for 
 Interim City Attorney

~~Gary M. Baum~~

Print Name

Donald A. Larkin

Date: 09/20/16

Resolution No. 16-089

CITY OF MORGAN HILL

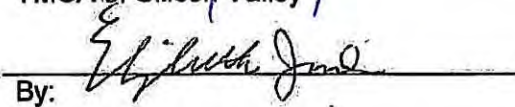

 City Manager

Steve Rymer

Print Name

Date: 9/21/16

YMCA of Silicon Valley

By: 

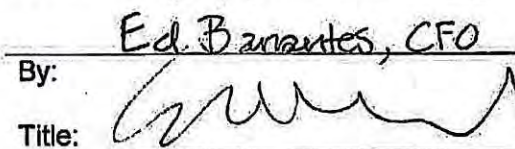
Title:

Elizabeth Jordan, COO

Print Name and Title of Signer.

If Corporate: Chairman,
President or Vice President

Date: 9/2/16

By: 

Title:

Ed. Barantes, CFO

Print Name and Title of Signer.

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

Date: 9/16/16

Exhibit A

126-04-00-003

**THIRD AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This THIRD AMENDMENT TO AGREEMENT is made this 4th day of April, 2011, by THE CITY OF MORGAN HILL a municipal corporation ("CITY") and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non-Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010. CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015.

WHEREAS, the Original Agreement and the amendments made by the First and Second Addendums thereto are hereinafter collectively referred to as the "Agreement" and are attached hereto as Exhibit A.

WHEREAS, Section 2.3 of the Agreement provides for two (2) five (5) year extensions by written mutual agreement and the parties have agreed to the first extension of the terms of the Agreement. Additionally, the Agreement provides for extensions beyond these first two (2) five (5) year extensions based upon mutual agreement.

WHEREAS, CITY and YMCA desire to extend the term of the Agreement for an additional five (5) years and make other modifications to the Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. The Agreement shall be amended to reflect the new address of the YMCA of Silicon Valley so that Paragraph 1 shall be amended and replaced in its entirety by the following:

"1. Parties to the Agreement.

City is the City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Silicon Valley, 80 Saratoga Avenue, Santa Clara, California 95051, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Phone: 408-351-6413
Fax: 408-298-0143"

2. The term of the Agreement shall be extended to June 30, 2021 so that Paragraph 2.1 of the Agreement shall be amended and replaced in its entirety by the following:

"2.1 The term of this Agreement shall terminate June 30, 2021 unless earlier terminated by either party as provided in Section 2 or extended as provided in Section 2.3."
3. Paragraph 3.2 sub section e. of the Agreement shall be amended and replaced in its entirety by the following:

"e. Reporting on status of operations at the CRC as requested."
4. Paragraph 3.6 of the Agreement shall be amended and replaced in its entirety by the following:

"3.6 The City Community Services Director and the YMCA Chief Operating Officer shall meet periodically to evaluate CRC operations. Reports shall be provided annually to the City Council and the Board of Directors of the YMCA of Silicon Valley on member satisfaction data and data on the financial performance of the CRC. The Director and Chief Operating Officer may involve other City and YMCA staff in development of the annual report as desired."
5. Paragraph 5.1 sub section c. of the Agreement shall be amended and replaced in its entirety by the following:

"c. The proposed annual budget and work plan will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6."

6. Paragraph 5.2 of the Agreement shall be amended and replaced in its entirety by the following:

"5.2 As part of the initial annual budget, the City shall pay YMCA an agreed upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC or other City facilities in support of the CRC membership. The first three payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15 and January 15. The final quarterly payment shall be made within 15 days following September 1 of each year. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan."

7. Paragraph 7 of the Agreement shall be amended and replaced in its entirety by the following:

"7. Integration with other Facilities.

The parties agree to discuss and consult on recreational and fitness programs offered to Morgan Hill residents including, but not limited to, teens and seniors at other City or YMCA owned or operated venues."

8. Paragraph 8.2 shall be removed from the Agreement.

9. Paragraph 9.2 of the Agreement shall be amended and replaced in its entirety by the following:

"9.2. Members of the CRC who signed up for membership prior to April 1, 2016 shall be allowed to utilize five other YMCA of Silicon Valley facilities until September 1, 2016. After September 1, 2016 access to other YMCA facilities shall not be included as a benefit of CRC membership. After April 1, 2016 no portion of processing fee paid by CRC members shall be credited to the YMCA of Silicon Valley."

10. Paragraph 14 of the Agreement shall be amended and replaced in its entirety by the following:

"14 Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail charges and postage prepaid

and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City notice shall be addressed as follows:

City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill CA 95037
Phone 408-779-7271
Fax 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill CA 95037
Phone 408-779-7271
Fax 408-779-3117

In the case of notices to be given to the YMCA notice shall be addressed as follows:

President and CEO, YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Phone: 408-351-6413
Fax: 408-298-0143

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section."

11. Exhibits A and B to the Agreement shall be replaced in their entirety by Revised Exhibits A and B to this Third Amendment.

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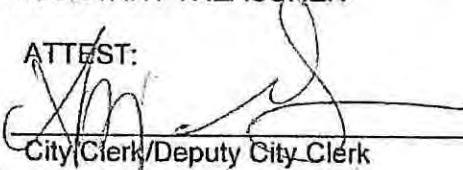
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12. All terms and conditions of the Agreement as amended as attached as Exhibit A shall remain in full force and effect.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:

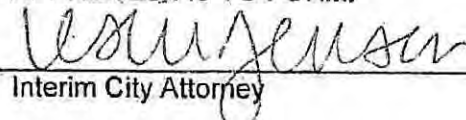

City Clerk/Deputy City Clerk

for Michelle Wilson

Print Name

Date: 4/28/16

APPROVED AS TO FORM:


Interim City Attorney

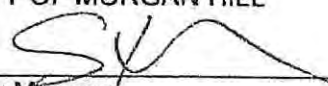
for Gary M. Baum

Print Name

Date: 04/25/16

Resolution NO. 16-017

CITY OF MORGAN HILL

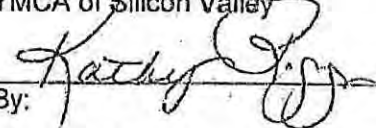

City Manager

Steve Rymer

Print Name

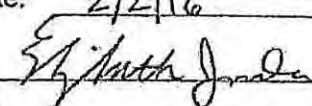
Date: 4/27/16

YMCA of Silicon Valley


By:

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

Date: 2/2/16


By:

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

Date: 2/2/16

126-04-06-003

**SECOND ADDENDUM TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This SECOND ADDENDUM TO AGREEMENT is made this 23rd day of December, 2015, by THE CITY OF MORGAN HILL a municipal corporation CITY and YMCA OF SILICON VALLEY formerly known as YMCA of Santa Clara Valley a California Non Profit Corporation ("YMCA") for operation of the Centennial Recreation Center CRC located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS the CITY and YMCA entered into the Agreement made as of June 29, 2006 for operating the CRC.

WHEREAS the CITY and YMCA entered into the First Addendum to the Agreement on October 10, 2010.

WHEREAS the City and YMCA desire to extend the term of the Agreement, but need additional time to discuss details of the extension.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

All terms and conditions of the Agreement as amended as attached as Exhibit A shall remain in full force and effect except that Paragraph 2.3 of the agreement shall be amended to reflect a change of the extension deadline, which shall be extended to February 5, 2016, the new language for Paragraph 2.3 of the Agreement which is amended and replaced in its entirety by the following:

- "2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010, for the first extension, and no later than February 6, 2016, for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP."

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:

Deputy [Signature]
 City Clerk
 Date: 1/4/16

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 12/23/15

APPROVED AS TO FORM:

for [Signature]
 City Attorney
 Date: 12/23/15
 Council Approval:
12/16/15

YMCA OF SILICON VALLEY

[Signature]
 By: Kathy Riggs
 Title: President and CEO
 Date: 12/23/15

[Signature]
 By: Elizabeth Jordan
 Title: Chief Operating Officer
 Date: 12/22/15

126-04-06-003

Exhibit A

**FIRST ADDENDUM TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This FIRST ADDENDUM TO AGREEMENT is made this 5th day of October, 2010, by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, YMCA OF SILICON VALLEY (formerly known as YMCA OF Santa Clara Valley), a California Non-Profit Corporation ("YMCA") for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, the CITY and YMCA entered into the Agreement made as of June 29, 2006, for operating the CRC

WHEREAS, Section 2.3 of the Agreement provides for two five-year extensions by written mutual agreement and the parties have agreed to the first extension of the terms of the Agreement.

THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

All terms and conditions of the Agreement, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the term of the Agreement shall be extended to June 30, 2016, so that Paragraph 2.1 of the Agreement shall be amended and replaced in its entirety by the following:

"2.1 The term of this Agreement shall terminate June 30, 2016, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3."

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:

Julie Drimakis, Deputy
City Clerk
Date: 5/16/2011

CITY OF MORGAN HILL

[Signature]
City Manager
Date: 5-13-11

APPROVED:

[Signature]
Risk Manager
Date: May 11, 2011

YMCA of Silicon Valley

[Signature]
By:
Title: Executive Vice President
Date: 10/05/10

APPROVED AS TO FORM:

[Signature]
City Attorney
Date: May 12, 2011
Council reso. 10/20/10

[Signature]
By:
Title: Chief Financial Officer
Date: 10/05/10

00418

**CITY OF MORGAN HILL
AND
YMCA
COMMUNITY RECREATION CENTER
OPERATING AGREEMENT**

This Agreement ("Agreement") is made this 29 day of JUNE, 2006 ("Effective Date"), by and between the City of Morgan Hill, a California general law city ("City"), and the YMCA of Santa Clara Valley, a California non-profit corporation ("YMCA") for operations of the Centennial Recreation Center ("CRC") located at 171 W Edmundson Avenue, Morgan Hill, California.

Recitals

- A. The City owns the newly constructed CRC, a 52,000 square foot community recreation center which includes a fitness room, gymnasium, an indoor swimming pool, a senior wing and a teen wing.
- B. The YMCA is experienced in operating health and fitness facilities and is interested in expanding its programs in the Morgan Hill area.
- C. The City currently operates an Outdoor Aquatics Center, a Community Cultural Center and certain recreational programs.
- D. The parties believe they can maximize the programs offered and better control the expenses of operating the CRC if the City, using City employees, provides aquatics and teen programming while the YMCA, using YMCA employees, provides health and fitness and senior services at the CRC.
- E. The City and YMCA desire to take advantage of the YMCA's experience in offering membership-based health and fitness programming while ensuring that the City remains responsible to the City Council and the residents of Morgan Hill for the CRC's operations including its financial performance.
- F. The parties desire to set forth the terms and conditions of their relationship in this Agreement with further details of the actual CRC operations to be set forth in a Center Operating Plan. The initial Center Operating Plan ("COP") is attached to this Agreement as Exhibit A; however it is intended that specific services provided by each party and the operating relationships may change over the course of this Agreement in order to meet community needs.
- G. The City and YMCA commit themselves to work together in the spirit of partnership for the success of the CRC, subject to the terms and conditions of this Agreement, and to deal with each other with fairness, respect, cooperation, and good faith in the operation of the CRC and performance of this Agreement. The City and YMCA commit to promptly resolve disputes over this Agreement and/or CRC operations.

NOW THEREFORE, the parties agree as follows.

Agreement

1. Parties to the Agreement.

City is the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Santa Clara Valley, 1922 The Alameda, 3rd Floor, San Jose, California 95126, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Santa Clara Valley
1922 The Alameda, 3rd Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

2. Term.

- 2.1 The term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2011, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3.
- 2.2 In addition to the provisions of Section 5.6 and 5.7 below, either party may request an early termination of this Agreement after June 30, 2009. Such a request must be made in writing, and must be made a minimum of six months in advance of proposed termination date, unless City and YMCA mutually agree to a lesser time. Provided that such written request is timely made, termination shall occur upon the specified termination date.
- 2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010, for the first extension, and December 31, 2015, for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP.

3. Management and Staffing.

- 3.1 City and YMCA agree to cooperatively manage and operate the CRC as a first class recreation center for the benefit of the public. A "Recreation Supervisor," or other classification as determined by the City, shall be employed by the City and responsible for all CRC operations. The initial COP is attached to this Agreement as Exhibit A and is incorporated into this Agreement by this reference. The COP, among other things, details staff duties and operating relationships. The parties hereby authorize the Morgan Hill City Manager ("City Manager") and YMCA of Santa Clara Valley CEO ("CEO") to modify in writing the COP from time to time as may be necessary to facilitate efficient operations of the CRC consistent with the intent of this Agreement.
- 3.2 The Recreation Supervisor shall be employed by the City. The City shall provide the YMCA with opportunities for meaningful and substantial input on the selection and ongoing performance of the Recreation Supervisor. The Recreation Supervisor shall have operational authority for the management and operation of the CRC. The duties and responsibilities of the Recreation Supervisor shall include, but not be limited to:
- a. Managing the CRC so that it is developed and maintained as a first class recreational center.
 - b. Preparing and administering the annual budget and work plan for development and operation of the CRC.
 - c. Preparing the annual progress report for the preceding fiscal year for approval by the City Council.
 - d. Organizing, scheduling, and directing YMCA and City employees assigned to the CRC.
 - e. Reporting on status of operations at the CRC as requested, including, but not limited to, providing a monthly report intended for the City Council and YMCA Board of Directors.
 - f. Performing all duties that are usual and customary and normally associated with the position of a recreation supervisor of a public recreation center.
- 3.3 Notwithstanding the parties' agreement to cooperatively manage and operate the CRC, City employees working at the CRC are employed solely by the City, and the City retains all responsibilities associated with their employment. YMCA employees working at the CRC are employed solely by the YMCA, and the YMCA retains all responsibilities associated with their employment. The parties agree to cooperate fully with each other in resolving any employment issues. The YMCA agrees to indemnify and hold the City, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC YMCA employee acting within the scope of employment. The City agrees

to indemnify and hold the YMCA, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC City employee acting within the scope of employment.

- 3.4 Performance issues on the part of the Recreation Supervisor may be raised by either party and addressed through the dispute resolution process provided for in Section 11.1 of this Agreement.
- 3.5 The CRC staff shall be comprised of employees of both the City and the YMCA. It is acknowledged and agreed between the parties that to achieve the optimum performance of the total CRC staff, City employees may be directed to work at the CRC on YMCA activities within the scope of this Agreement and YMCA employees may be directed to work at the CRC on City activities within the scope of this Agreement.
- 3.6 The City Recreation and Community Services Director and the YMCA Vice President of Operations shall meet periodically to evaluate CRC operations and shall prepare no later than December 31 of each year and present as soon as practicable thereafter an annual report on CRC operations to the City Council and the Board of Directors of the YMCA of Santa Clara Valley. The report shall include member satisfaction data as well as data on the financial performance of the CRC. The Director and Vice President may involve other City and YMCA staff in development of the annual report as desired.

4. Grounds and Facilities.

- 4.1 The City shall retain title to the grounds, buildings, structures and all other improvements, and its equipment. Subject to approval of the Recreation Supervisor, certain equipment owned by the YMCA may be used at the CRC; provided, however, any such equipment must be identified in a writing attached to the COP and the equipment must be clearly marked as YMCA property on the equipment itself.
- 4.2 The City and YMCA agree that both parties shall continue joint use of the grounds, buildings, equipment and other improvements at the CRC in furtherance of this Agreement. The Recreation Supervisor shall determine the most effective use of the CRC grounds, buildings, equipment and other improvements subject to the approval of the City's Director of Recreation and Community Services, or such other individual designated in writing by the City Manager, in consultation with the Vice President of Operations for the YMCA, or such other individual designated in writing by the YMCA CEO.

5. Budget and Funding.

- 5.1 The parties agree that it is the intent of the arrangement governed by this Agreement that revenues generated by CRC programs and activities will be sufficient to cover operating expenses (including, but not limited to, maintenance and contributions to any capital improvement reserves established in the budget) no later than fiscal year 2008/09. (For purposes of this Agreement, "fiscal year" shall mean the twelve consecutive months beginning July 1 of the year first referenced and ending June 30 of the year last referenced. For example, "fiscal year 2008/09" means the period beginning July 1, 2008 and ending June 30, 2009.)
- a. In February of each year, the Recreation Supervisor and the Executive Director of the Mount Madonna YMCA ("Executive Director") shall develop budget assumptions related to the CRC operating budget for the following fiscal year.
 - b. Before March 15, or on another mutually-agreed upon date, the Recreation Supervisor and Executive Director shall develop the preliminary proposed annual CRC operating budget and workplan. The budget will include estimated costs and revenue from health and fitness activities and senior services as well as agreed-upon capital improvement reserves. The YMCA may agree to the preliminary proposed CRC operating budget and workplan or terminate this Agreement subject to the notification provisions of section 5.6.
 - c. The proposed annual budget and work plan and the latest progress report will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6.
 - d. Once the annual budget and work plan is approved by the City Council, that annual budget and work plan shall be implemented by the Recreation Supervisor for the upcoming fiscal year.
- 5.2 As part of the initial annual budget, the City shall pay YMCA an agreed-upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC. All the agreed-upon services shall be provided at the CRC. The foregoing payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15, January 15 and April 15. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan.

- 5.3 The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including, but not limited to, a significant unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled.
- 5.4 The City shall provide YMCA with monthly reports on the operating position of the CRC. Both parties agree to maintain agreed-upon customer service standards and accessibility over the course of the year, while recognizing that operations may change over the year in order to meet financial objectives for CRC operations.
- 5.5 As part of the annual budget and work plan adoption process, the parties will agree on a method for separately accounting for fee-based activities (health and fitness, aquatics, facility operations) and non-fee-based activities (senior and teen centers). A budget worksheet for the initial year is attached as Exhibit B. A final annual budget reconciliation shall be prepared no later than October 1 of each year. Any net operating gain for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be distributed to the parties as follows: 60% to the City and 40% to the YMCA. Any net operating loss for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be paid by parties as follows: 60% from other City funds and 40% by transfer of funds from the YMCA to the City no later than thirty (30) days after receipt of the final budget reconciliation.
- 5.6 In the event that the YMCA does not agree to the annual budget and work plan as approved by the City Council, this Agreement shall terminate. The YMCA will notify the City in writing that this Agreement shall be terminated six months from the date of notification, or on another date as agreed-upon by the parties. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.
- 5.7 In the event that the YMCA objects to the candidate selected by the City for the position of Recreation Supervisor, either at the initial hire or in

future hiring actions, the YMCA may terminate this Agreement by giving the City six months advance written notice. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.

6. Programming and Pricing.

- 6.1 The City and YMCA will agree upon programming and pricing as part of the annual budget and work plan process. The initial programming and pricing is as described in the COP. The parties will agree on which existing recreational and fitness programming currently offered by the City or the Mt. Madonna YMCA, if any, will be moved to the CRC.
- 6.2 The parties acknowledge that the scope of community services offered at the CRC, including youth, family, intergenerational, special event, and adaptive programming, may evolve over time.
- 6.3 Initial program pricing and the pricing philosophy for the CRC are provided in Section 2 of the COP.
- 6.4 It is intended that the annual City Council approval of the budget and work plan will authorize the City Manager to adjust prices and programming as needed in accordance with a City Council adopted policy or directive.

7. Integration with other Facilities.

The parties agree to consult with each other prior to offering new recreational and fitness programs to Morgan Hill residents including, but not limited to, teens and seniors at other City or YMCA owned or operated venues.

8. Senior Services.

- 8.1 The parties agree that the YMCA will provide senior program services as defined in the COP at the CRC. The YMCA currently has a contract with the County of Santa Clara to provide a Senior Nutrition Site in Morgan Hill. It is anticipated that the YMCA will relocate the Senior Nutrition Site to the CRC. In developing the annual budget, as long as the County pays for the direct costs of the Senior Nutrition Site, there will be no charge to the City for these services. At any time that the County ceases paying the YMCA

for a Senior Nutrition Site at the CRC, inclusion of this service and the cost of providing it will be considered as part of the annual budget and work plan.

- 8.2 As part of the annual budget and work plan, the City will provide an annual stipend to the YMCA to subsidize the operation of the Senior Center core program. In Fiscal Year 06/07, this will be \$37,500. In the first full year of operation, Fiscal Year 07/08, this will increase to \$75,000. Increases in future years will be agreed upon by the parties as part of the annual budget and work plan process.

9. Revenues and Marketing.

- 9.1 The parties agree that Morgan Hill residents are intended to be the primary beneficiaries of the CRC, although the CRC will be available for the use of non-residents as well. To that end, the parties desire to develop a marketing plan and activity program pricing structure that will accomplish the foregoing goal and will provide adequate revenues to cover annual operating expenditures. The parties also intend to jointly and/or individually seek grants or other sources of funding which may be available to provide existing or expanded services and programs at the CRC. Both parties agree to cooperate fully, one with the other, in such endeavors. Implementation of this Section is addressed more fully in the COP.
- 9.2 Members of the CRC will be able to utilize other YMCA of Santa Clara Valley facilities. Half of the processing fee paid by members who chose this option will be credited to the YMCA of Santa Clara Valley.
- 9.3 The parties agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation, or ancestry, in any activity or membership offered pursuant to this Agreement.

10. Audits, Record Retention and Inspection.

- 10.1 The parties understand and agree that the City is a public entity and as such is subject to various laws including, but not limited to, the California Public Records Act, and as such members of the public as well as representatives of governmental agencies have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or other records of each party relating to this Agreement. Such material, including, but not limited to, all pertinent costs, accounting, and financial records shall be retained by each party for a period of at least five (5) years after their creation date.

- 10.2 Each party grants the other party, at the requesting party's expense, the right to conduct at any reasonable time an audit and re-audit of the books, records and business conducted related to this Agreement and observe the operation of the business so that the accuracy of the above records and any of the invoices for services provided can be confirmed.
- 10.3 In the event of any dispute between the parties as to financial matters, the parties agree, as their sole remedy, to mutually choose an independent auditor to conduct an investigation of the disputed matter. If the parties are unable to mutually choose an independent auditor, each party shall identify one auditor and those two auditors shall choose a third, independent auditor to conduct the investigation. The auditor so named shall be deemed to have been mutually chosen by the parties. If, as a result of the investigation of the mutually chosen auditor, any adjustment in payment is required by either party, such payment shall be made within sixty (60) days of receipt of written demand for same. The decision of the mutually chosen auditor shall be final and binding upon the parties.
- 10.4 If either party triggers the process set forth in section 10.3 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 10.3.

11. Dispute Resolution.

- 11.1 Operational Issues. Except as otherwise specifically set forth in this Agreement, any dispute concerning day to day operational decisions in the implementation of this Agreement as further detailed in the COP shall be resolved by the Recreation and Community Services Director and the Vice President of Operations of the YMCA. For any disputes which cannot be resolved by these individuals, either party may request that the Morgan Hill City Manager resolve the dispute after first consulting with the YMCA CEO. The decision of the City Manager shall be final.
- 11.2 Other Issues. Should other disputes arise between the parties for which a dispute resolution mechanism or remedy is not otherwise specifically set forth in this Agreement (such as, for example, in section 10.3), and the parties are unable to resolve such matters between themselves by negotiation after the complaining party has provided the other party written notice of the complaint and a reasonable opportunity to cure the problem, then such disputes shall be resolved in the courts of the County of Santa Clara in accordance with applicable law and procedure, including any claims procedures that may be required by law with respect to a general law city.

- 11.3 Termination Option. If either party seeks judicial redress of a dispute as set forth in section 11.2 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 11.2.

12 Indemnification.

- 12.1 The City agrees to indemnify, defend and hold harmless YMCA, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with City's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the City by any person pursuant to this Agreement. City's duty to indemnify YMCA shall survive the expiration or other termination of this Agreement.
- 12.2 YMCA agrees to indemnify, defend and hold harmless City, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with YMCA's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the YMCA by any person pursuant to this Agreement. YMCA's duty to indemnify City shall survive the expiration or other termination of this Agreement.

13. Insurance.

- 13.1 General Requirements. Without limiting YMCA's indemnification of City or limiting City's indemnification of YMCA, YMCA and City shall each provide and maintain at its own expense throughout the term of this Agreement the hereinafter listed programs of insurance covering its operations hereunder. Such insurance provided by YMCA and by City shall be provided by insurers satisfactory to City's Risk Manager and satisfactory to the YMCA's Risk Manager, respectively, and a certificate or other evidence of coverage and certified copies of additional insured endorsements satisfactory to City and YMCA, respectively, shall be delivered to the City's Risk Manager and to the YMCA's Risk Manager, respectively, before the effective date of this agreement. It is recognized

that City currently provides general liability, workers' compensation, and auto liability insurance coverage through a combination of self insurance, pooled coverage, and purchased excess insurance coverage. Such evidence of coverage shall specifically identify this Agreement and shall contain the express condition that City or YMCA, as applicable, is to be given at least thirty (30) days advance written notice of any modification or termination of any program of insurance. All such insurance provided by YMCA shall be primary to and not contributing with any other insurance maintained by City. With the exception of workers' compensation insurance, all such insurance provided by YMCA and by City shall name "City of Morgan Hill, its elected officials, officers, employees, agents and representatives" and "YMCA of Santa Clara Valley, its officers, employees, agents, and representatives," respectively, as additional insureds.

At all times during the term of this Agreement, YMCA and City shall provide and maintain the following forms and amounts of insurance:

- a. Liability. Comprehensive General Liability Insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises-operations, products/completed operations, independent contractors, advertising, contractual, broad form of property damage, and personal injury with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and an aggregate limit of not less than Four Million Dollars (\$4,000,000).
- b. Workers' Compensation. Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability.
- c. Comprehensive Automobile Liability. Endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than Two Million Dollars (\$2,000,000) per accident.
- d. Failure to Comply. Failure on the part of YMCA or City to procure or maintain required insurance shall constitute a material breach of contract upon which City or YMCA, respectively, may immediately terminate this Agreement. Notwithstanding this requirement, in the event that YMCA or City fails to procure or keep in effect at all times the insurance coverage required herein, City or YMCA, respectively, may in its discretion procure said insurance on behalf of YMCA or City, respectively, and charge YMCA or City, respectively, the full cost of the insurance and administrative costs.

- 13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided

at the CRC. This includes tuberculosis, drug screen and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

14. Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, charges and postage prepaid, and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City, notice shall be addressed as follows:

City Manager
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-3117

In the case of notices to be given to the YMCA, notice shall be addressed as follows:

President and CEO
YMCA of Santa Clara Valley
1922 The Alameda, Third Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section.

15. Amendments.

This Agreement shall only be amended by a writing signed by both parties after approval by the City Council and YMCA Board of Directors.

16. Appropriations.

The payment of any obligations of the City described in this Agreement is subject to the annual appropriation of funds for said payments by the City Council. This provision does not affect any obligation of the City for payment of funds attributable to a fiscal year for which an annual budget has been approved.

17. Miscellaneous Provisions.

- 17.1 Good Faith and Cooperation. The City and YMCA agree that it is in their mutual best interest and in the best interest of the public that the CRC be operated and managed as herein agreed and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.
- 17.2 Severability. If any provision of this Agreement, or the application of such provision to any party or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to such party or circumstance other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.
- 17.3 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to that state's conflict of laws principles.
- 17.4 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior to contemporaneous written or oral negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof.
- 17.5 Parties in Interest. Nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any party other than the YMCA and the City nor shall anything in this Agreement relieve or discharge the obligation or liability of any third party to any party to this Agreement nor shall any provision give any third party any right of subrogation or action over or against any party to this Agreement.
- 17.6 Waiver. Failure of either party to complain of any action, non-action or default of the other party shall not constitute a waiver of such party's rights hereunder with respect to such action, non-action or default. Waiver by the YMCA or City of any right or any default hereunder shall not constitute a waiver of any subsequent default of the same obligation or for any other default, past, present or future. No payment by a party, or acceptance by the other party, of a lesser amount than shall be due from one party to the

other shall be treated otherwise than as a payment on account. The acceptance by a party of a check for a lesser amount, with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and a party may accept such check without prejudice to any rights or remedies which it may have against the other party.

- 17.7 Construction. This Agreement has been negotiated by the parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and without strict construction in favor of or against any party.
- 17.8 No Assignment. This Agreement, nor any part of it nor any right or obligation arising from it shall be assigned without the express written consent of the parties.
- 17.9 Independent Contractor Status. The parties shall at all times be acting as independent contractors. This Agreement is not intended, and shall not be construed to create the relationship of agent, servant, employee, partner, joint venture or association as between the parties. The parties understand and agree that any of their personnel furnishing services to the CRC under this Agreement are employees solely of the party which hired such personnel for purposes of workers' compensation liability and for purposes of receiving all other types of employee benefits. The parties shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any personnel hired by them for injuries arising from or connected with services performed under this Agreement, and shall bear the sole responsibility and liability for furnishing all other employee benefits to any personnel hired by them.

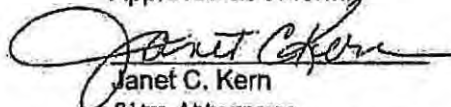
IN WITNESS WHEREOF, the YMCA and the City have executed this Agreement as of the day and year first above written.

YMCA

By: 
Name: DAVID G. THORNTON
Title: PRESIDENT & CEO

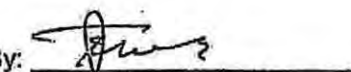
CITY OF MORGAN HILL

Approved as to form:


Janet C. Kern

City Attorney:

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By: 
J. Edward Tewes, City Manager

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EXHIBIT A

CENTENNIAL RECREATION CENTER OPERATING PLAN May 2006

1. Community Recreation Center Management.

- a. The City of Morgan Hill and the YMCA of Santa Clara Valley through the Mt. Madonna Branch will work together in the spirit of partnership to provide health and fitness and senior services to members and participants of the new Centennial Recreation Center. The YMCA will offer an agreed-upon range of programming and will involve the City in hiring, supervising and evaluating all staff that deliver these programs.

b. Personnel

It is recognized that all staff who work at the CRC are members of multiple work teams and are members of one CRC staff team. When staff are working they will be expected to work together as one, high performing team focusing on customer service, safety, communication, and cooperation.

All CRC staff will attend appropriate staff meetings as determined by the CRC Supervisor and Associate Supervisor. YMCA staff will be expected to attend selected YMCA trainings and staff meetings of the branch or Association. City staff will be expected to attend selected City trainings and meetings. When appropriate, CRC staff will have access to selected YMCA and City trainings.

To ensure a team environment, CRC staff will have many items in common:

- Identical staff uniforms with the partnership logo on the uniform and the organizational logo on staff name tags.
- Joint staff meetings.
- Identical payroll periods.
- Identical safety and risk management policies.
- Expectation to work as a team and support all other departments of the CRC.
- Responsibility to identify problems and provide solutions for the entire center.

The CRC Supervisor will be hired by the City and will be responsible for providing leadership for all CRC team members in an effort to deliver a large volume of high quality programs. The team will be comprised of three major departments:

- City staff hired by the CRC Supervisor.
- City staff hired by the Aquatics Supervisor.
- YMCA staff hired by the YMCA.

Success of the CRC Supervisor will be measured by:

- Creating one high performing CRC staff team from City CRC, YMCA CRC, and Aquatics Department CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center
- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

The CRC will have a Municipal Services Assistant who will provide support to supervisors, coordinators, and program directors.

The Associate CRC Supervisor for Health and Fitness will be hired by the YMCA and will supervise the Welcome Center Program Director, the Health and Fitness Program Director, and will be responsible for membership sales and all land based staff and fitness programming. Water based fitness classes will be supervised by the Aquatics Supervisor.

The Welcome Center Program Director is responsible for marketing the membership of the facility. This position will supervise the sales and service staff who work the Welcome Center. They will assure that people can join the facility at any time the facility is open, and will be responsible for all enrollment for any program at the facility. In addition it is hoped that the Welcome Center can also take enrollment for programs at other city facilities and the YMCA.

c. Reporting relationships.

	CRC City Staff	CRC Supervisor	CRC YMCA Staff
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	CRC City Staff	CRC Supervisor	CRC YMCA Staff
Position	Recreation Coordinator (Teens), Recreation Coordinator (Aquatics), Municipal Services Assistant, Maintenance Specialist	CRC Supervisor	Associate CRC Supervisor for Health and Fitness, Wellness Center Director, Senior Program Director
Job Descriptions	City	City with YMCA input	YMCA with City input
Recruiting	City	City with YMCA input	YMCA with City input
Screening	City	City	YMCA of Santa Clara Valley
Decide finalists	City	City with YMCA input	YMCA with City input
Interviews	Regular process, possible YMCA involvement	Regular process with a visit to a YMCA and a near final interview with City and YMCA staff together	Regular process with City involvement
Decision	City	City decision with YMCA input	YMCA decision with City input
Reports to	CRC Supervisor	Recreation and Community Services Director	Mt Madonna YMCA Branch Executive
Employee Progressive Discipline	City with possible YMCA input	City with possible YMCA input	YMCA with possible City input
Performance Evaluation	CRC Supervisor with input from YMCA	Recreation and Community Services Director with input from YMCA	YMCA with input from CRC supervisor

d. Staff liaison:

The Mt. Madonna YMCA will provide a liaison to the CRC to:

- Meet weekly with CRC Supervisor to coordinate YMCA programming and services with the CRC
- Work with CRC Supervisor and Welcome Center Director on Marketing and enrollment strategies
- Provide supervision to Associate CRC Supervisor for Health and Fitness and Seniors Program Director to assure program quality and maximum enrollment

- Interface with the Santa Clara County Department of Aging
- Resolve any YMCA staff performance problems

e. Capital expenditures.

Beginning in FY 07/08, the parties will develop a plan for future facility replacements. The replacement schedule will be developed during the budget process and funded as an annual operating expense for the CRC. The City will include the YMCA in the planning process, but will retain final decision-making authority on the facility replacement plan.

- f. **Facility maintenance.**
The CRC Supervisor will be responsible for managing facility maintenance in cooperation with the Building Division of the Community Development Department. The YMCA will be responsible for fitness equipment upkeep and maintenance. At all times, the CRC and its equipment will be maintained in a safe, clean, and operational manner. All CRC staff will be responsible to assist in keeping the facility clean as part of their daily duties. City staff and/or contractual crews will perform detailed, daily cleaning. A daily, monthly, quarterly, and annual cleaning plan will be developed to ensure the long-term integrity of the CRC.
- g. **Cash Handling/Accounting/Payables/Receivables/Collections.**
The CRC Supervisor will be responsible to ensure all cash handling, accounting, payables, receivables, and collections policies are adhered to by CRC staff. The City and YMCA will cooperatively determine which party can most effectively and efficiently perform these duties as part of the partnership. Detailed policies and procedures will be developed for all financial aspects of the CRC operations.
- h. **Membership policies.**
The City and YMCA will cooperatively develop membership policies that are intended to ensure community access, maximize revenue and comply with legal mandates. Existing YMCA policies may be modified to meet the CRC's operational needs. Both parties understand and agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation or ancestry.
- i. **Membership software.**
The City and YMCA will cooperatively determine which software package best meets the CRC's membership sales, tracking, and management needs. All appropriate CRC team members will be thoroughly trained to ensure that accurate and timely processing of information is achieved.
- j. **Operating hours: Estimated Days and Hours of Operation.**
The CRC will be open seven days per week except on major holidays; Easter, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas. The facility will be open according to the following daily schedule:

Monday through Friday	5am to 10pm
Saturday	6:30am to 8pm
Sunday	8am to 6pm

The City and YMCA may determine that it is in the best interest of the partnership and CRC members to adjust the operating schedule.

- k. Customer surveys and complaint resolution.
Customer surveys will be available at the Welcome Center at all times. The CRC Supervisor and Welcome Center Director will be responsible to track comments, provide recommendations for service improvements, and to ensure all complaints are handled in a professional and timely manner.
- l. Fundraising and scholarships.
The YMCA will raise funds as part of its Community Support Campaign to help support the senior nutrition program and to offer additional programs for teens involved in the CRC (Youth & Government, teen leadership or camp scholarships).

2. Programming and pricing.

a. Pricing Policy

- Member fees will be set to provide access to the health and fitness facility and maximize revenue
- The resident rate will apply to those who work or live in Morgan Hill.
- The standard rate will apply to those who do not live or work in Morgan Hill.
- Since membership is the income stream that will provide the best chance of cost recovery, pricing will be done to encourage membership
- Seniors and teens have specialized centers in the facility, and will not need to join in order to take advantage of the programs in these centers. If they wish to use the fitness facilities, they will need to join the CRC or purchase a day pass.

b. Pricing changes

The City Manager will be empowered by the City Council to adjust fees pursuant to Council policy.

- As expenses increase, prices will be adjusted to meet full cost recovery goals
- It is best to increase fees on an annual basis a small amount rather than have a larger amount after a longer time period of no fee increase
- Fee increases would be determined annually by taking into account 3 major items:
 - (1) Salary Increases
 - (2) Energy Costs
 - (3) CPI
- If it is determined that the current pricing structure relating to the daily fee is undermining the cost recovery goal, the City Council will make a decision to revise the fee or the goal.

c. Main Membership Categories

- Adult: Includes one adult and all children under the age of 18 living at the same address. Access all hours, all core programs, and Fitlinxx
- Family: Two adults and all children under the age of 18 living at the same address. Access all hours, all core programs and Fitlinxx
- Special Hours: One adult, designed for seniors and those with flexible schedules. 10:00 am to 4 pm weekdays, and any time on the weekends, access all core programs and Fitlinxx during these hours
- Adult Plus: Addition of extra adult over the age of 18 living at the same address, access all hours, all core programs and Fitlinxx
- Day Pass: Access for one person to open gym, open swim, fitness room
- YMCA membership: Those members who want access to other YMCA facilities or programs, will be offered the opportunity to select this when they join or at any time in the future. The City will pay the YMCA 50% of the processing fee for each membership that selects this option.

Categories may be adjusted, deleted or new categories added by agreement of both parties.

d. Program Pricing Structure.

Type	Member/ resident	Member/standard	Non/member /Resident	Non/member /standard
Membership processing fee	\$50 for Adult \$75 for Family	\$50 for Adult \$75 for Family		
Membership	Fee	Fee +	n/a	n/a
YMCA membership	Free	Free	Fee	Fee
Core class	Free	Free	Fee	Fee + \$10
Specialty Class	Member fee	Member Fee + \$10	Non-member fee	Non-member fee + \$10
Swim lessons	Member fee	Member fee + \$10	Non-member fee	Non-member fee + \$10
Fitlinxx	Free	Free	n/a	n/a
Day Pass adult	Free	Free	\$7	\$9

- Core Fitness classes and FitInxx are free for members. Examples:
 - Aerobics
 - Water Fitness
 - Group cycling class
 - 12 week personal fitness program
- Day pass participants can use the gym, the fitness center, and lap or recreational swim. Day pass participants are not eligible to take part in a fitness class except as a one time guest
- Non members who want to take a class would buy a class card good for one month from the date of the first use. These punch cards will have up to 8 punches. This will give them access to the class, but not to other areas of the facility.
- Some Specialty Classes will have an additional cost for everyone. Examples:
 - Strength Training
 - Personal Training
 - Swim lessons

3. Governance.

By June 30, 2007, CITY and YMCA will evaluate the feasibility of establishing a CRC advisory committee. Such a committee could be comprised of teen center, senior center, and health and fitness users as well as Mt. Madonna YMCA board members or advisors as determined appropriate by the CITY and YMCA. If such an advisory committee were determined to be feasible, CITY and YMCA would establish a mission for the committee and plan for supporting its activities.

4. Partnership Evaluation.

As described in Section 2.3 of the Operating Agreement, the parties will conduct an evaluation of the success of the partnership prior to extending the term of Agreement. This evaluation will be presented to the City of Morgan Hill City Council and the YMCA of Santa Clara Valley Metropolitan Board of Directors and Mt. Madonna YMCA board of Directors, as appropriate.

The parties will work together on the development of this evaluation, agreeing to the criteria to be used in the evaluation. The criteria may include:

- Extent to which a high performing CRC staff team has been developed from City CRC, YMCA CRC, and Aquatics Division CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center

- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning.
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

5. Advertising and marketing of facility and programming.

- a. The partnership of the City and YMCA will be prominently displayed on the facility, staff uniforms, and written materials. Both the City and YMCA agree that any differentiation of the two parties for branding purposes is not intended to separate the staff during the operation of the facility, but to take advantage of the brand name of the YMCA and City for marketing purposes. The parties will create a logo to identify and celebrate the partnership.
- b. The CRC Supervisor is responsible for developing a marketing plan in coordination with the YMCA
- c. The parties intend to advertise CRC programming in both City and YMCA publications/resources
- d. Staff nametags may identify special departments of the facility.
- e. Printed materials will say "Centennial Recreational Center, operated in Partnership with the YMCA."
- f. City is willing to have YMCA staff provide information regarding other YMCA programming that would be available to CRC members as part of their membership.
- g. The partnership will be identified with signage inside the building. Printed materials with the YMCA logo and other identifying information may be used at the facility.

6. Senior Services Provided at the CRC.

The YMCA will provide senior services, programs and activities at the CRC, in conjunction with other senior service organizations, according to the following guidelines:

- a. Senior services will be offered a minimum of six hours each weekday throughout the year.
- b. The YMCA will collaborate with and coordinate the activities of senior service providers, such as the Community Action Group, AARP, and the Friends of the Morgan Hill Senior Center to ensure a range of service,

support and enrichment opportunities to seniors at the CRC. Typical programs may include, but will not be limited to: nutrition, health insurance counseling, legal assistance, health screenings, income tax preparation assistance, educational presentations, recreational activities, arts and crafts classes, counseling services, and opportunities for volunteer service. The parties acknowledge and agree that the CRC is a public facility and as such there are certain legal restrictions upon facility use.

- c. The YMCA will operate a daily nutrition program, serving an average of 75 meals per weekday to 350 unduplicated seniors annually.
 - d. The YMCA will offer opportunities for other social service agencies to provide health maintenance, education, and advocacy programs in a location convenient to seniors.
 - e. The YMCA will provide activities and services each month that focus on developing and strengthening individual seniors in spirit, mind and body.
 - f. The YMCA will provide a minimum of one special event per month to maintain interest and enthusiasm.
7. It is understood between the parties that this COP may be amended from time to time by the mutual agreement of the parties to reflect operating experience.

Centennial Recreation Center Operating Budget Framework

EXHIBIT B

Centennial Recreation Center					
	City Aquatics	City CRC Administration, Operations, and Programs	Seniors	YMCA Health/Fitness	CRC Total
EXPENSE	XXX,XXX	XXX,XXX	XX,XXX	XXX,XXX	X,XXX,XXX
REVENUE	YYY,YYY	YY,YYY	-	YY,YYY	Y,YYY,YYY
TRANSFER IN					XX,XXX
OPERATING GAIN/ (LOSS)					
COST RECOVERY	%	%	%	%	%

Seniors:
Senior expense historically budgeted in Recreation Administration budget.

CRC Annual Budget:
Partnership goal to achieve 100% cost recovery by FY 08/09 based on 2006 City and YMCA Market Study.

Aquatics:
Second largest revenue source.
100% City responsibility.

CRC Administration and Operations:
Non-fee based activity expenses (City staff, utilities, supplies, Teen Center, etc.) will be paid from here.
100% City responsibility.

Partnership Reconciliation:
This column will be the agreed upon partnership portion of the budget.

Operating gains or losses will be determined annually from this number.

On an annual basis, membership revenues should significantly exceed expenses to assist in full cost recovery for the CRC.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

RECOMMENDATION(S)

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

Staff recommends that the City Council approve the purchase and implementation of an upgraded document management system from ECS. Integrated document management systems are a standard business tool for local government organizations which allow all departments within the City to coordinate work flow and business processes, share information, store data and records in conjunction with the City's records retention schedule, provide public access to records that are public, and facilitate customer service. While most cities in the region and throughout the state currently utilize such systems, Morgan Hill relies upon a mixture of non-integrated paper tracking systems and software systems that are often duplicative and very time intensive to carry out the City's many business processes.

Currently every day, information is used, moved, and archived in a very manual process which includes searching, copying, and routing. The process is tedious and very time-consuming, and the inefficiencies of this process divert staff from the crucial business of acting on this information. Now more than ever, it is critical that we update our processes to maximize our resources and staff time. With the current hiring freeze and reduction in contract staff, streamlining our business processes will support maintaining customers service levels. Staff is recommending moving forward with this software acquisition ahead of the budget adoption in order to 1) utilize this time when many of our facilities are closed due to the shelter-in-place orders to implement the variety of workflows and improve business processes and 2) in anticipation of re-opening many facilities, to have these processes in place as many of our current business processes may no longer be viable in our new normal.

The City currently uses a legacy Laserfiche product called Laserfiche United which is limited to retention of records. The software used is over 14 years old and does not provide business process automation, electronic forms management, or public access. The proposed document management system provides integrated and automatic workflows across departments throughout the City, integration with many software systems already in use by the City, unlimited electronic forms for use both internally and for the public, access through a public facing portal to records that are deemed public records, integrated document management in conjunction with the City's records retention schedule, and increased accuracy with automated OCR (Optical Character Recognition) and indexing of records.

The document management software is intended to provide significant process efficiencies throughout the organization. Below are some processes that will be improved and where teams will save time:

- Contract routing
- Special event permits
- Teammate onboarding
- Budget development
- Accounts payable
- Accounts receivable
- Utility services application
- Credit card statement review
- Travel reimbursement requests
- Ethics and sexual harassment prevention training
- Vendor registration
- Public record requests
- Records management
- Development process inquiries
- Field or recreation facilities use/applications
- Recreation Facility Membership and Program Registration Forms Management

The business processes above will be improved through the use of automated workflows that enable automated document routing that saves time and money by reducing the time it takes to photocopy, the time it takes to hand deliver and any lag time, and the manual process of recording the end product. We will develop a rules-based routing system to streamline document handling procedures, automatically notify teammates when documents require them to take action, track every step of the process, and monitor the process to ensure efficiency and that we are meeting deadlines. We will also use a combination of custom and existing tested workflows and forms available in the Laserfiche library. As new forms and workflows are created by different organizations, they are uploaded to the Laserfiche Library for all clients to use. We would also be able to take an existing workflow and customize it to our needs. The ability to use these existing tools will offer significant time savings in developing the workflows for all of the City's various business processes. Efficiency will also be added through our ability to have increased communication and collaboration as the product can be accessed remotely, online, or on mobile devices. This will allow for uninterrupted

workflows as teammates can access the system from anywhere.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation by staff for the City Council to authorize the purchase and implementation of a document management system.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve purchase of the document management system. Staff would continue to utilize the existing processes and evaluate other areas where staff time savings and efficiencies could be gained.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

Total funding necessary to purchase the document management system would be \$80,987, which includes the first year's annual maintenance cost of \$14,515. The annual maintenance cost of \$14,515 would mean an increase in the on-going annual expense of \$8,815, as compared to the current annual maintenance cost of \$5,700. The system would be funded by the Information Technology Fund (730), which has sufficient fund balance and budgetary appropriations to accommodate this purchase in the current fiscal year.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Quote Upgrade to Avante



ECS IMAGING, INC.
YOUR WORLD CLASS LASERFICHE PROVIDER

ECS Imaging, Inc.
5905 Brockton Ave. Suite
C
Riverside CA, 92506

Phone: 951-787-8768
Fax: 951-787-0831
www.ecsimaging.com

Quote

Q4 2019 V1

Quote Type **Avante**

Quotation For

Name: Michelle Bigelow
Company: City of Morgan Hill
Phone:
E-mail:

Quote Info

Date: 11/20/2019 rev 5/15/2020
Quote Number: 112019
Valid Through: 1/30/2020 7/30/2020
Terms: net 15
Account Manager: pete H
Phone:
E-mail:

Description of Product and Services

Upgrade existing Laserfiche Legacy version (United) to Laserfiche Avante 10.4

Software

Avante includes Workflow and Forms Essentials

SKU	Description	Unit Price	Quantity	Line Total
MSE30	Laserfiche Avante Server for MS SQL with Workflow	\$ 5,000.00	1	\$ 5,000.00
MNF16	Laserfiche Named Full User w/Web Access, Snapshot, and Email	\$ 600.00	45	\$ 27,000.00
MFRM16	Laserfiche Forms Professional	\$ 50.00	45	\$ 2,250.00
MPFRM	Laserfiche Forms Portal Add-on	\$ 7,995.00	1	\$ 7,995.00
MPP5	Laserfiche Standard Public Portal (25 retrieval user licenses)	\$ 25,000.00	1	\$ 25,000.00
MCQ01	Laserfiche Quick Fields	\$ 595.00	1	\$ 595.00
MCQC5	Laserfiche Quick Fields Real Time Look Up and Validation Package	\$ 595.00	1	\$ 595.00
MCNC16	Laserfiche Connector	\$ 25.00	45	\$ 1,125.00
MDCSI	Laserfiche Integration with DocuSign	\$ -	1	\$ -
MCA01	Laserfiche Import Agent	\$ 1,495.00	1	\$ 1,495.00

Trade-in Credit \$ (17,183.00)

Software Subtotal \$ 53,872.00

Annual Maintenance and Licensing

SKU	Description	Unit Price	Quantity	Line Total
MSE30B	Laserfiche Avante Server for MS SQL with Workflow LSAP	\$ 1,000.00	1	\$ 1,000.00
MNF16B	Laserfiche Named Full User w/Web Access, Snapshot, & Email LSAP	\$ 120.00	45	\$ 5,400.00
MFRM16B	Laserfiche Forms Professional LSAP	\$ 10.00	45	\$ 450.00
MPFRMB	Laserfiche Forms Portal Add-on LSAP	\$ 1,600.00	1	\$ 1,600.00
MPP5B	Laserfiche Standard Public Portal (25 retrieval user licenses) LSAP	\$ 5,000.00	1	\$ 5,000.00
MCQ01B	Laserfiche Quick Fields LSAP	\$ 120.00	1	\$ 120.00
MCQC5B	Laserfiche Real Time Look Up and Validation Package LSAP	\$ 120.00	1	\$ 120.00
MCNC16B	Laserfiche Connector LSAP	\$ 5.00	45	\$ 225.00
MDCSIB	Laserfiche Integration with DocuSign	\$ 300.00	1	\$ 300.00
MCA01B	Laserfiche Import Agent LSAP	\$ 300.00	1	\$ 300.00

Annual Maintenance Subtotal \$ 14,515.00

Hardware

SKU	Description	Unit Price	Quantity	Line Total
Hardware Subtotal \$ -				

Professional Services

SKU	Description	Rate	Quantity	Line Total
ECSCI	ECS Consulting Services	\$ 1,800.00	1.00	\$ 1,800.00
ECSCI	ECS Installation Services	\$ 1,800.00	1.00	\$ 1,800.00
ECSCI	ECS Configuration Services	\$ 1,800.00	4.00	\$ 7,200.00
ECST	ECS Training Services	\$ 1,800.00	1.00	\$ 1,800.00

Professional Services Subtotal \$ 12,600.00

Special Terms

Install software above, configure 1 simple forms & workflow to be used as "train the trainer" for system administrator . User Training: search, scan/index, submit forms, approve within workflows. Additional forms & workflows will be under a separate proposal

Subtotal \$ 80,987.00

Tax Rate Software Only (Download Only)

0.000%

Tax \$ -

Software is only available via download and is not subject to CA sales tax

Shipping \$ -

Total \$ 80,987.00

Billing Terms:

All Software and Annual Maintenance is billed 100% at project start. Services are billed 50% up front minimally with remaining Services as incurred.

Annual Priority Support Contract Includes:

- o Maximum 4 Hour Response Time - Upgraded from 24 hours with traditional LSAP support
- o Live Hours of support are 7:30am - 5:00pm PST M-F
- o Unlimited Phone and E-mail Support
- o On-site time is calculated to the nearest half hour and minimum onsite calculation is between 2-8 hours depending on the location
- o On-site time can be used for remedial training, installing updates, and consulting, in addition to support
- o ECS may allow planned after hours support in rare circumstances. In these circumstances Priority Support will be billed at double the hourly rate.

Hardware Return Policy:

Unopened boxed hardware may be exchanged for a full cash or credit refund within 7 days - a 15% restocking fee may apply. Defective hardware will be exchanged for a replacement per the terms and conditions specified on the product warranty card.

- o Two free admissions to the ECS Annual Customer Conference along with Free Admission to Quarterly User Groups
- o Monthly E-Newsletter
- o On-site/remote support hours included as quoted. On-site within next business day as needed. Additional hours of support purchased at a discounted hourly rate. Customers not under this plan can purchase on-site hours at \$250/hour with a 1 hour minimum for remote support, and an 8 hour minimum onsite charge in addition to travel expenses.

S30 LF Server	6600	1	\$6,600.00
Ful User License	566.66	6	\$3,399.96
read only user	220	25	\$5,500.00
Snapshot	100	6	\$ 600.00
Quick Fields base	491.66	1	\$ 491.66
Quick Fields Real time LI	591.66	1	\$ 591.66

\$17,183

Attachment: Quote Upgrade to Avante [Revision 1] (2737 : Purchase and Implementation of Laserfiche)

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, May 6, 2020 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Angie 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 Angie Gonzalez declared the posting of the agenda.

CITY MANAGER'S REPORT

City Manager Christina Turner provided an update regarding the mail theft that we are experiencing in

Minutes Acceptance: Minutes of May 6, 2020 7:00 PM (CONSENT CALENDAR)

Morgan Hill. The first wave of paper stimulus checks began entering the mail on April 22nd, the region saw an increase in mail theft after that. Our Police Department has increased patrols to address this up-tick in crime. The City also sent out a Facebook post alerting the community of the mail theft and precautions they can take including getting mail daily and signing up for informed delivery so that people know what they have coming in their daily mail. US Postal Inspection Services (USPIS) asked that residents help protect themselves from mail theft by picking up their mail every day. The vast majority of mail theft happens overnight. Our police department has conducted surveillance which led to a possible suspect who fled in a vehicle. Detectives are investigating this incident. Our officers are sharing information with the postal investigators who investigate mail theft. Additionally, victims of postal related crimes can file a complaint with USPIS by visiting their website www.uspis.gov <<http://www.uspis.gov>>. When USPIS receives a report of a community mailbox burglary, letter carriers will generally deliver a flyer to all affected victims with contact information, guidance on how to be vigilant, of financial fraud that may have resulted, and tips to help prevent becoming a victim of mail theft in the future. United States Postal Inspection Services assists the postal service in the development and deployment of counter measures to deter mail theft when appropriate.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that High Speed Rail's (HSR) draft Environmental Impact Report (EIR) for the San Jose to Merced subsection is out and available for review. It is a little difficult to find as it is not sitting in plain sight. If you go to their website: hsr.ca.gov <<https://hsr.ca.gov>> on the home page there is a link that says San Jose to Merced Environmental Documents, if you click on that link and scroll towards the bottom you will see a few links there. One says copies of the draft EIR/EIS, that is not the link. If you want to see the actual report, keep scrolling and there is a link called Report with a plus sign and if you click on that plus sign it gives you all the links to the various sections of the report that are on line. There are some technical documents that are too large to be posted online and if you want copies of those you will have to contact HSR.

He stated that the State of California has launched a new website active today, it is [COVID19.ca.gov](https://covid19.ca.gov) <<https://covid19.ca.gov>>. It is a lot more comprehensive than the prior one they had. For people looking to get more information about the State's Shelter in Place orders or testing or other resources this site is much better.

PUBLIC COMMENT

Mayor Constantine opened the public comment at 7:06 p.m.

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

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

PUBLIC COMMENT SUPPLEMENT 4

ADOPTION OF AGENDA

MOTION:

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 3, 5 and 6.

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

1. APPROVE AGREEMENT WITH VALLEY TRANSPORTATION AUTHORITY FOR MEASURE B EDUCATION AND ENCOURAGEMENT PROGRAM FUNDING

Recommendation:

Approve and authorize the City Manager to execute and administer a contract with Valley Transportation Authority to receive funding for Measure B Education and Encouragement Programming.

2. APPROVE UTILITY SYSTEM RADIO PURCHASE FROM MOTOROLA

Recommendation:

1. Approve the sole source purchase of radios for the Utilities Division from Motorola for \$142,267; and
2. Authorize the City Manager to approve the purchase order.

3. ADOPT RESOLUTION APPROVING REVISIONS TO CITY COUNCIL POLICY CP-94-04, THE CITY'S INVESTMENT POLICY

Recommendation:

Adopt resolution approving revisions to City Council Policy CP-94-04, the City's Investment Policy.

4. ITEM PULLED FOR DISCUSSION

5. APPROVE THE APRIL 15, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE APRIL 22, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM MOVED FOR DISCUSSION

4. CERTIFICATION OF MARCH 2020 ELECTION RESULTS

Recommendation:

Adopt resolution reciting the facts of the Special Municipal Election of March 3, 2020 and declaring the results of such other matters as provided by law.

Mayor Constantine opened the public comment at 7:08 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:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

PUBLIC HEARING

7. INITIATE ANNUAL ASSESSMENT PROCESS FOR LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

Adopt resolutions approving the following actions:

1. Initiate the proceedings for the levy of assessments for Fiscal Year 2020-21;
2. Approve the Engineer's Annual Report and the proposed assessment levy; and
3. Declare the City Council's intention to levy the assessments in the District and to set the Public Hearing date for June 3, 2020.

Public Services Director Chris Ghione presented the report.

Mayor Constantine opened the public comment at 7:16 p.m.
 Hearing no requests to speak, the public comment was closed.

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

OTHER BUSINESS

8. REVIEW THE NEED TO CONTINUE THE LOCAL EMERGENCY DUE TO COVID-19 RESPONSE AND SHELTER-IN-PLACE ORDERS

Recommendation:

Review current conditions and continue the March 13, 2020 emergency proclamation due to pandemic response.

City Attorney Donald Larkin, City Manager Christina Turner, and Economic Development Director Edith Ramirez gave a presentation.

Mayor Constantine opened the public comment at 8:08 p.m.
 Hearing no requests to speak, the public comment was closed.

Council Member Carr asked staff to come back in two weeks with how we are preparing for re-opening.

RESULT: ACCEPT REPORT

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Carr asked what is the next step regarding COVID-19 and assisting businesses re-open.

Council Member Martinez Beltran asked that we look into easing TOT taxes with hotels and having a Community workshop.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 8:56 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk

Minutes Acceptance: Minutes of May 6, 2020 7:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

RECOMMENDATION(S)

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities
Financial Sustainability

REPORT NARRATIVE:

The City's finances have been severely impacted by the global COVID- 19 pandemic and economic crisis. The latest projection shows the estimated revenue loss from the City's major revenue sources of approximately \$17 million over the three fiscal years from the current year FY2019-20 to FY2021-22. These estimates are based on the current information that is available and there remains uncertainty with the economic forecast. Further, we still do not know the long-lasting impacts of COVID-19 or whether full economic recovery will happen when the State of California and Santa Clara County begin to re-open based on the Governor's framework. This situation is not unique to Morgan Hill. Local governments across California and throughout the U.S. are facing similar deficits resulting from the impacts of COVID-19.

The City has already taken actions to reduce costs while trying to minimize the effects on the level of public services. To date, the City has implemented:

- ☐ Hiring freeze, except public safety
- ☐ Stricter expenditure controls
- ☐ Furlough of temporary and permanent staff members
- ☐ Limited travel and training
- ☐ Continued evaluation of current contracts and other non-personnel expenditures

During the Virtual City Council Budget Workshop on Friday, May 15, 2020, the Leadership Team presented the proposed budget reductions to align City's expenses with reduced revenue. The Capital Improvement Program component of the Budget Workshop was deferred to the May 20th City Council meeting.

Hale Avenue Extension

During the Council Workshop considerable discussion was had regarding the Hale Avenue Extension. The following background information is being included in this report to help the Council prepare for the continued discussion. City staff continue to recommend the project continue to move forward for several reasons that will be outlined below. Additionally, should the project be delayed or eliminated there will be significant ramifications for the City. Unfortunately, projects of this magnitude take a long time to develop and several decisions must be made along the way to continue to move them forward. The Council does have the option to not move forward with the project, but there will be costs associated with that decision.

The project continues to support congestion improvement by providing an additional north/south arterial roadway on the West side of the City. This was most recently outlined in the 2019 Cut-Through Traffic Study, which reaffirmed the roadway would reduce congestion on Monterey, and not just result in increased cut through traffic. Additionally, the project provides many other benefits and is consistent with the City's Vision Zero policy. It will take cars off the West side residential and collector streets improving safe routes to school for PA Walsh and St. Catherine's schools and will provide a separated Class 1 bike and pedestrian path for the length of the extension.

It is well known that the project has been planned for several decades, but it should be noted that the approval of the project's environmental impact report occurred in 2017 and re-evaluation of the project occurred at that time. Since that time significant investment by the City has been made to acquire all the property necessary for the project. Some of the impacts related to cancelling the project at this point, include:

- Delay could result in the grant funding from Measure B for construction of the project (estimated at \$16.5 million) being lost to the City. There are many projects in line for the Countywide funding, including large expressway projects that could take 5 years of funding individually. Delay on the project could result in the City being unable to get the funding back for years if ever. The City staff and elected officials have worked very hard to get this project to the top of the list for funding in a very competitive program area.
- The land acquisition for the project was funded through traffic impact fees collected for this purpose for many years. If the project does not go forward those funds would likely need to be refunded to developers with a total cost of approximately \$8 million or at minimum paid back to the fund from another funding source (likely the General Fund).

- The County of Santa Clara transferred land to the City of Morgan Hill for the specific purpose of constructing the roadway. The County purchased the property with County Road Funds and if the City does not use the property for the roadway, the City will need to pay the County back for the properties worth hundreds of thousands of dollars.
- The City has utilized eminent domain on the purchase of one section of property for the roadway. This was intentional to have the project shovel ready to be first in line for the very competitive Countywide funding. Additionally, the Water District's flood control project has significant need for much of the property taken by eminent domain. Not constructing the roadway could potentially jeopardize this acquisition and jeopardize that project as well.
- There has been discussion that the land be reserved for open space or park space. This property is not included in the City's current Parks Master Plan for this purpose, nor would the City staff recommend this property be taken on for this purpose as there would not be adequate funds to pay for the purchase or the ongoing maintenance.

LINKS/ATTACHMENTS:

1. Budget Workshop Presentation
2. Fee Waiver and Funding Organizations Outline
3. Principles to guide sustainable budget strategy
4. Budget Adjustments Schedule



Budget Workshop

Fiscal Year 2020-21 and 2021-22

Biennial Budget



Impacts to the Community

- Service level reductions
- Reduced support to community organizations
- Slower response to community requests
- Limited resources for Council initiated programs

Impacts on our Teammates

- Loss of employment for part-time temporary teammates
- Eliminate funding for 8.5 FTE over FY 2019-20 and FY 2020-21
- Loss of contractors working with the City
- Changes in several teammates' job assignments

Agenda

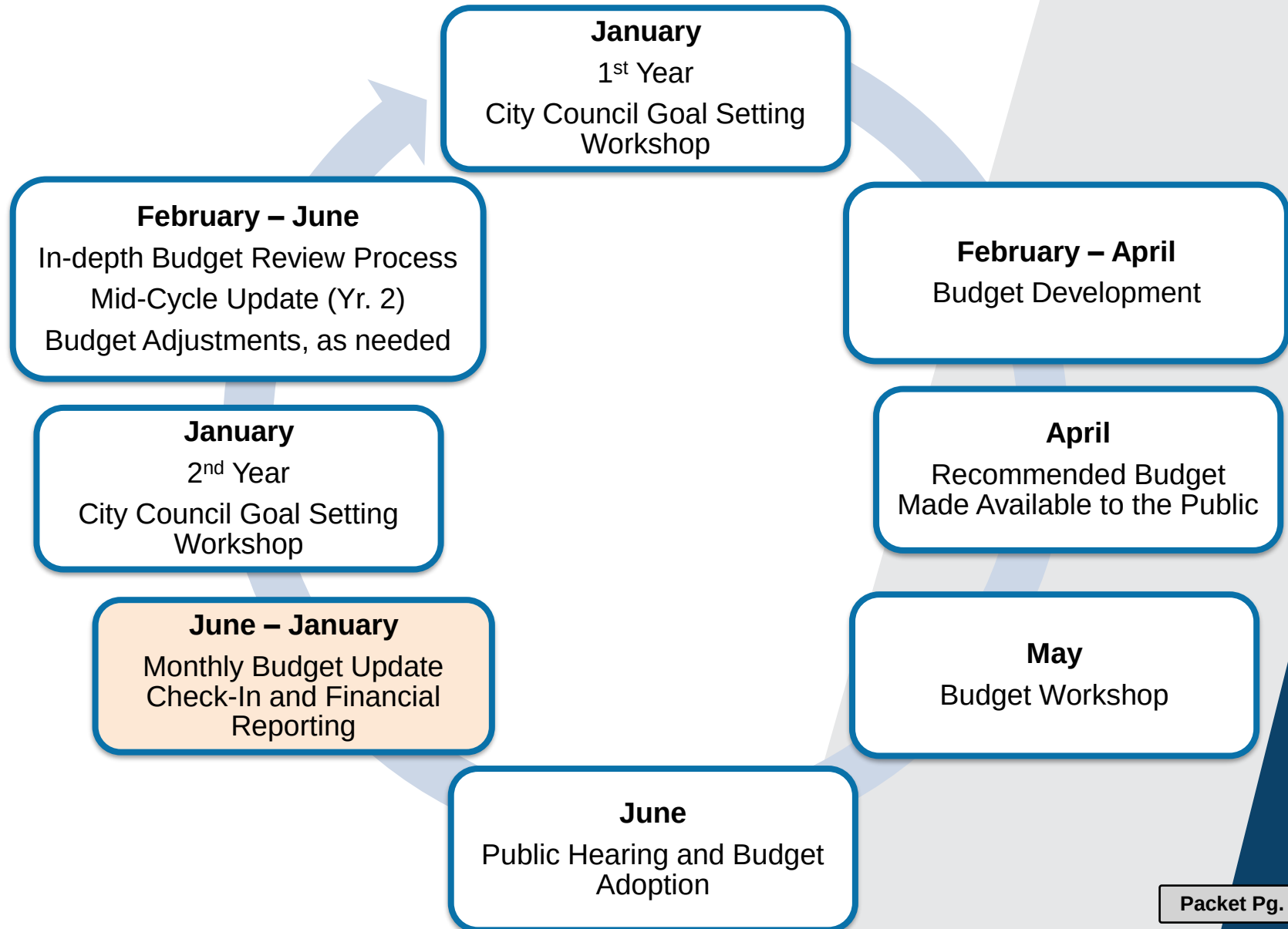
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Time	Topic
9:00 am	Introduction Budget Overview Recommended Budget Proposed Budget Reductions
11:30 am	Capital Improvement Program
12:00 pm	Break
1:00 pm	Engage Morgan Hill Community Advisory Group Input Questions & Answers Public Comment Council Discussion
3:00 pm	Adjourn

Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Biennial Budget Process



Ongoing Budget Updates

- Staff will continue to monitor the budgetary impacts and update City Council and community, coinciding with the Monthly Financials reporting
- **Tentative Upcoming Schedule:**
 - June 17, 2020 – Budget Hearing/Adoption
 - July 15, 2020 – Council Meeting
 - August – Council Recess (schedule if needed)
 - September 16, 2020 – Council Meeting
 - October 21, 2020 – Council Meeting
 - November 18, 2020 – Council Meeting
 - December 16, 2020 – Council Meeting



FISCAL YEARS 2020-2022

RECOMMENDED OPERATING AND CIP BUDGET

morganhill.ca.gov/budget

Major Funds - Discretionary

General Fund

- **Public Safety, Recreation and Community Services, Street and Park Maintenance Services, Economic Development, and Administration**

Major Funds: Non-Discretionary

Development Services Fund

- Provides planning, building and engineering services

Special Revenue Funds

- Housing and Environmental Services

Capital Project Funds

- Funds infrastructure related projects for streets, parks, storm drainage and public facilities

Enterprise Funds

- Provide for Water and Wastewater Utilities' Operations and Infrastructure Improvements

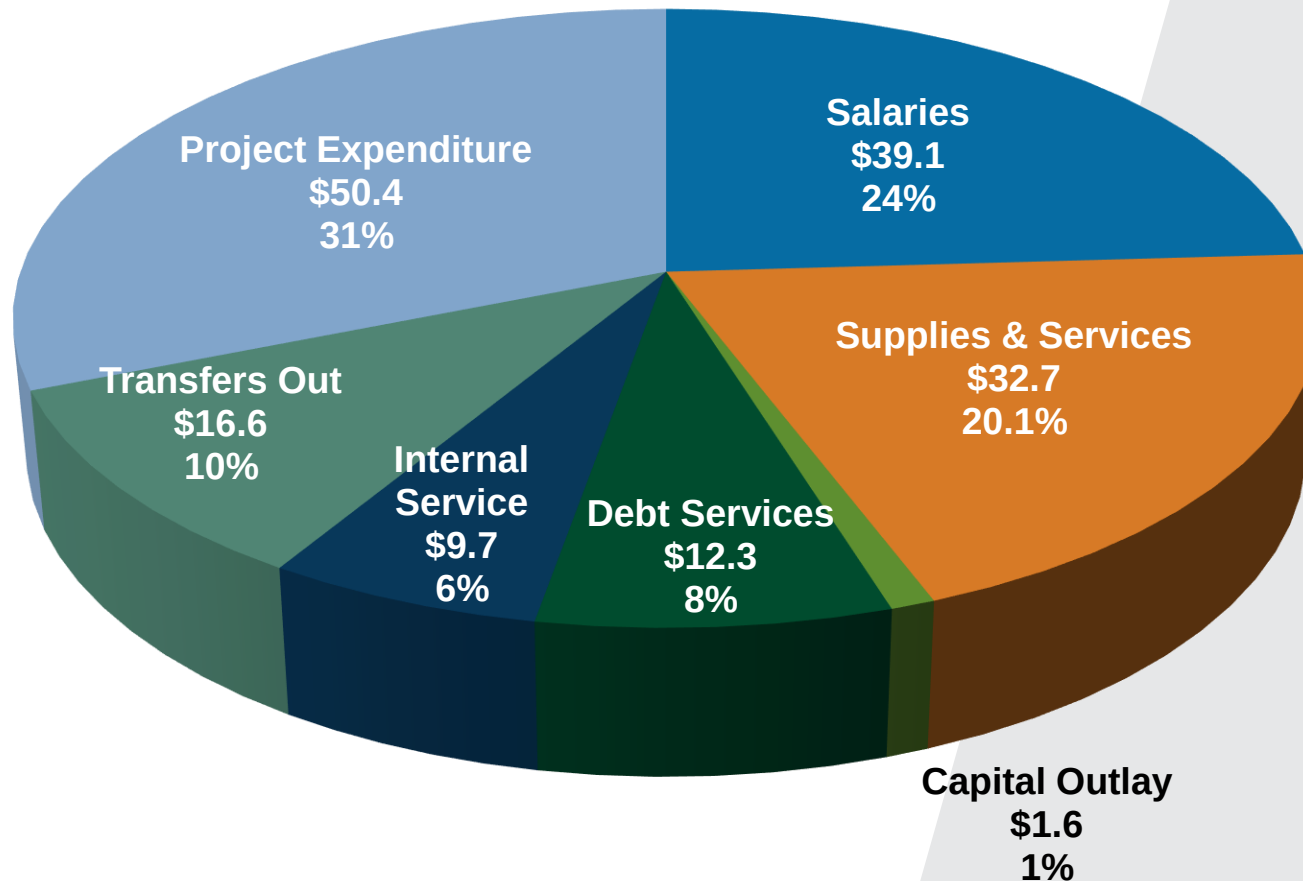
Citywide Recommended Budget Summary (April 22nd)

(In Millions)

	FY 2020-21	FY 2021-22
Operating Budget	\$113.4	\$115.7
Capital Improvement Program	48.9	28.6
Total Recommended Budget	\$162.3	\$144.3

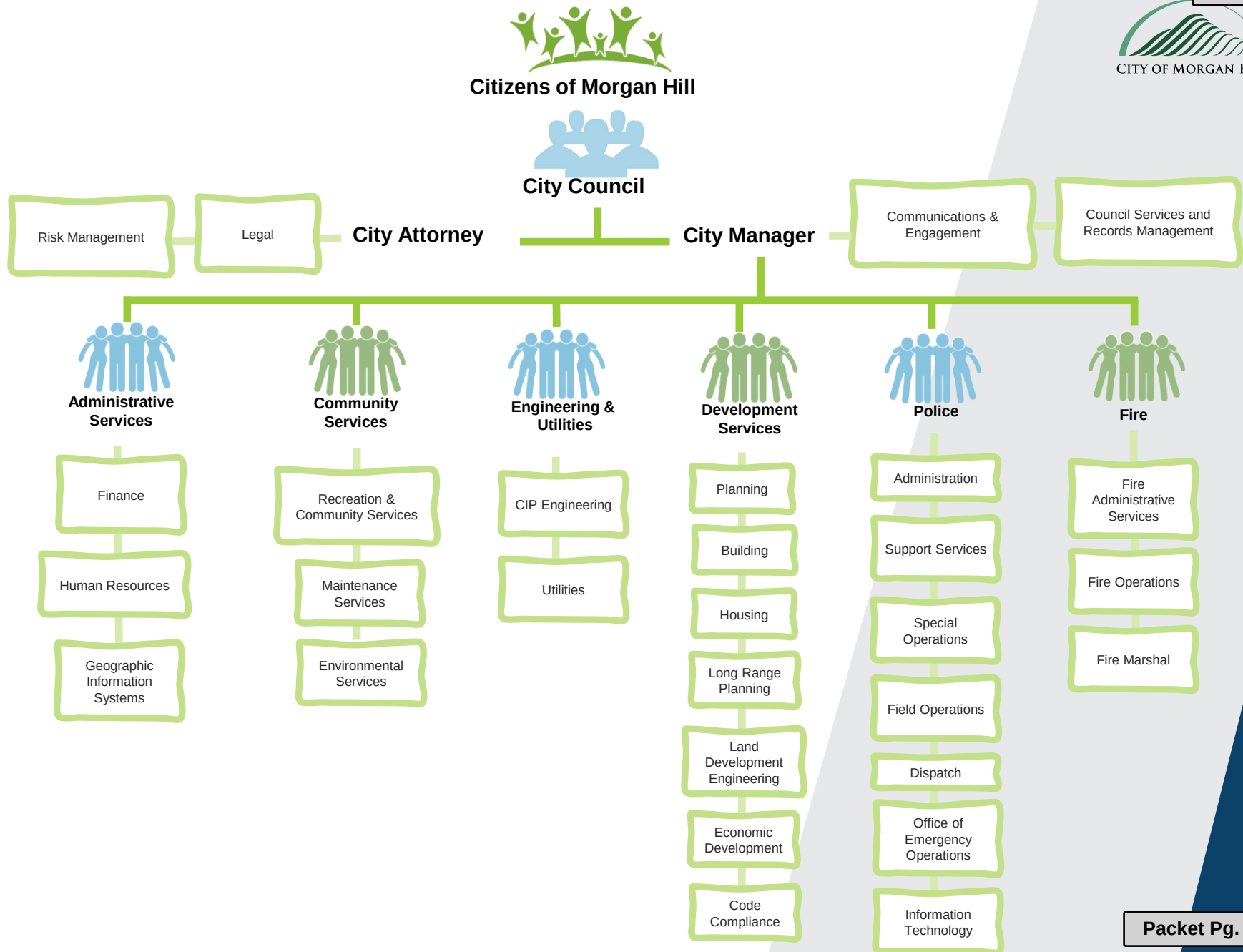
Citywide Expenditures by Category FY 2020-21: \$162.3M

(In Millions)

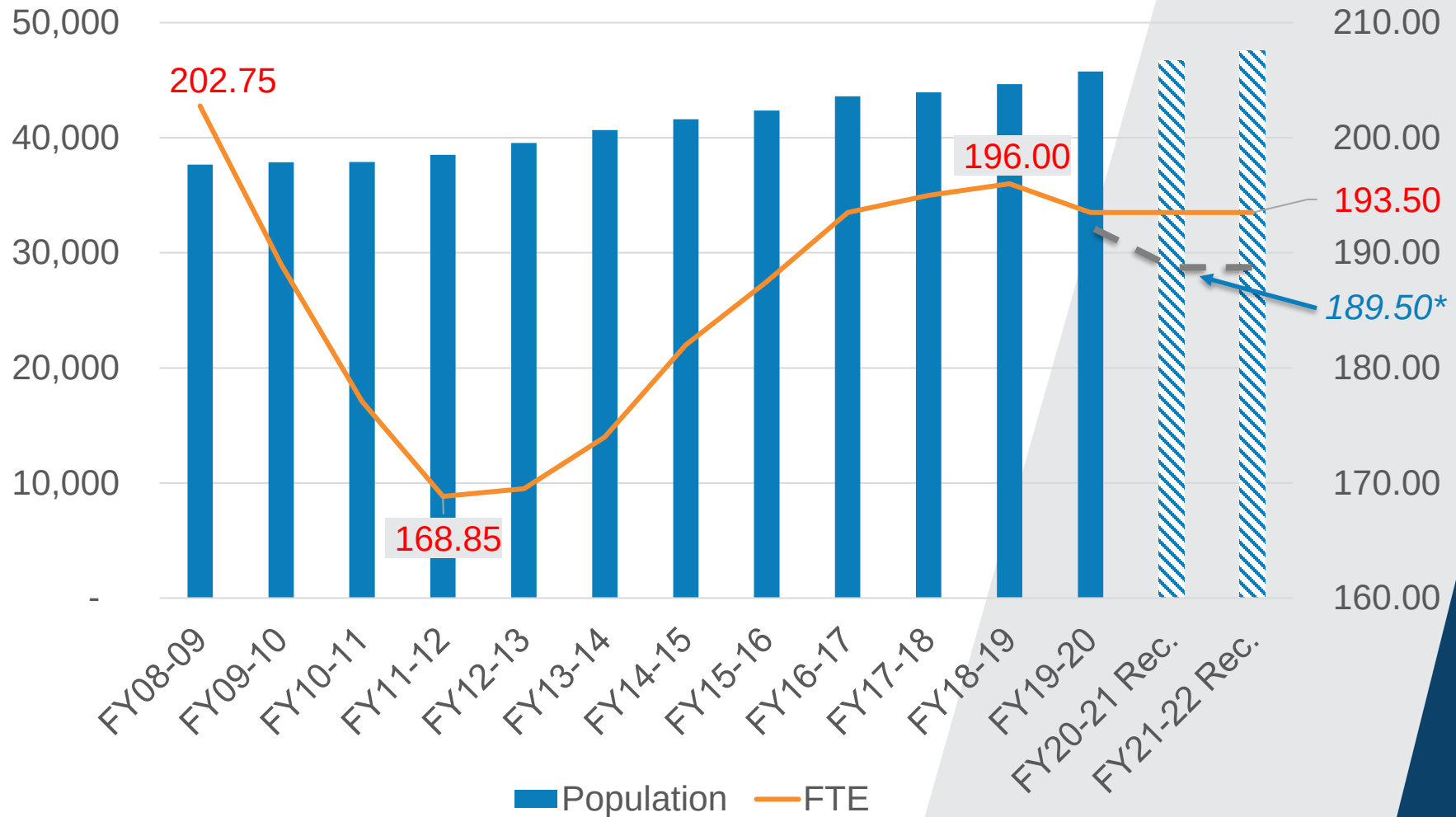


Personnel





History of Funded Full-Time Equivalent (FTE)



* Approved FTE = 193.50, through hiring freeze and attrition, the funding will be maintained for 189.50 FTE

FY2020-21 and FY2021-22 assume 2% population growth (10 yr. avg.)

Personnel Changes

FY2019-20

- 4.5 FTE Eliminated

FY2020-21

- 2 FTE Unfunded through hiring freeze
- 2 FTE Unfunded through attrition (1/2 Year)

General Fund



General Fund Resources by Category FY2020-21: ~~\$46.2~~ **\$43.9** Million

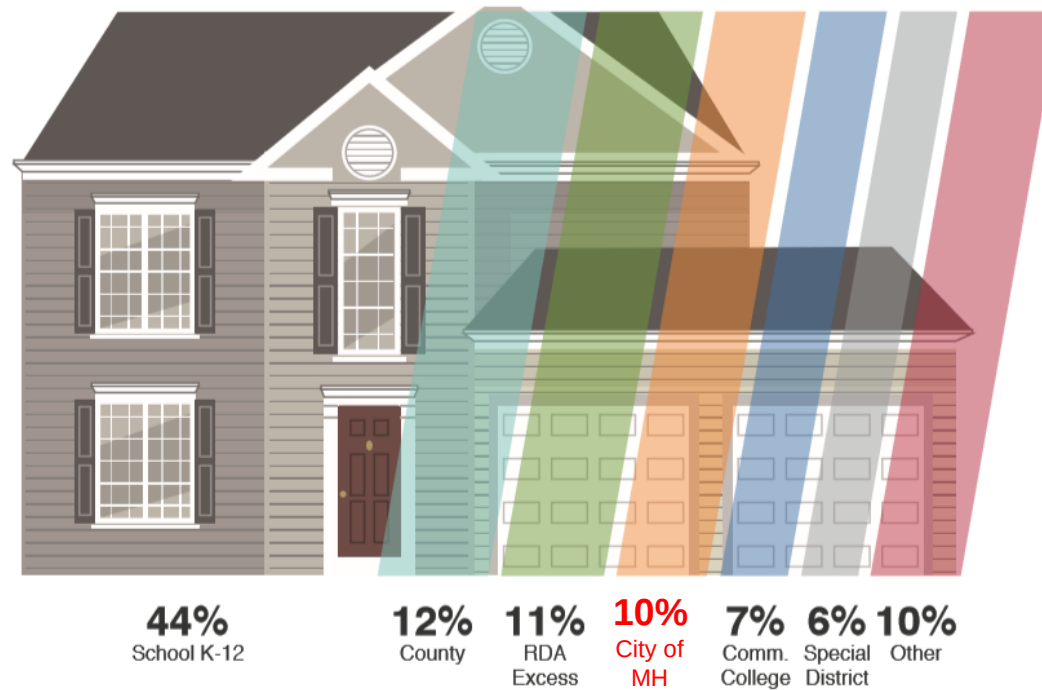
(In Millions)

General Fund Resources Category	(April 22 nd) Recommended	Adjustments	(May 15 th) Recommended	%
Taxes	\$28.2	(\$1.4)	26.8	61%
Current Services	\$9.8	(\$0.7)	9.1	21%
Transfers In	\$2.5	-	\$2.5	6%
Use of Fund Balance	\$3.8	(\$0.2)	\$3.6	9%
Other Agencies	\$0.6	-	\$0.6	1%
Use Of Money & Property	\$0.8	-	\$0.8	2%
Licenses, Permits & Fines	\$0.3	-	\$0.3	1%
Other Revenues	\$0.3	-	\$0.3	1%
TOTAL	\$46.2	(\$2.3)	\$43.9	100%

General Fund – Property Tax

FY 2020-21 = \$13.8M, 34% of GF

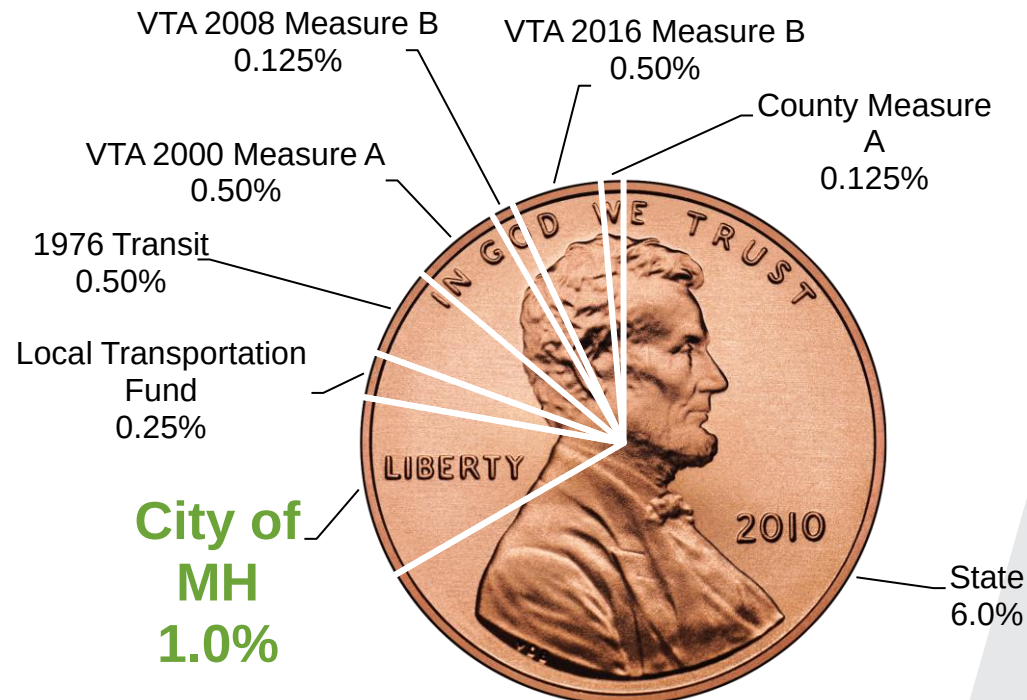
Morgan Hill Property Tax 1% Distribution



General Fund – Sales Tax

FY 2020-21 = ~~\$8.6~~ **\$8.0M**, 20% of GF

Allocation of Sales Tax Rate (Current Sales Tax Rate 9.0%)



General Fund – Recreation Services

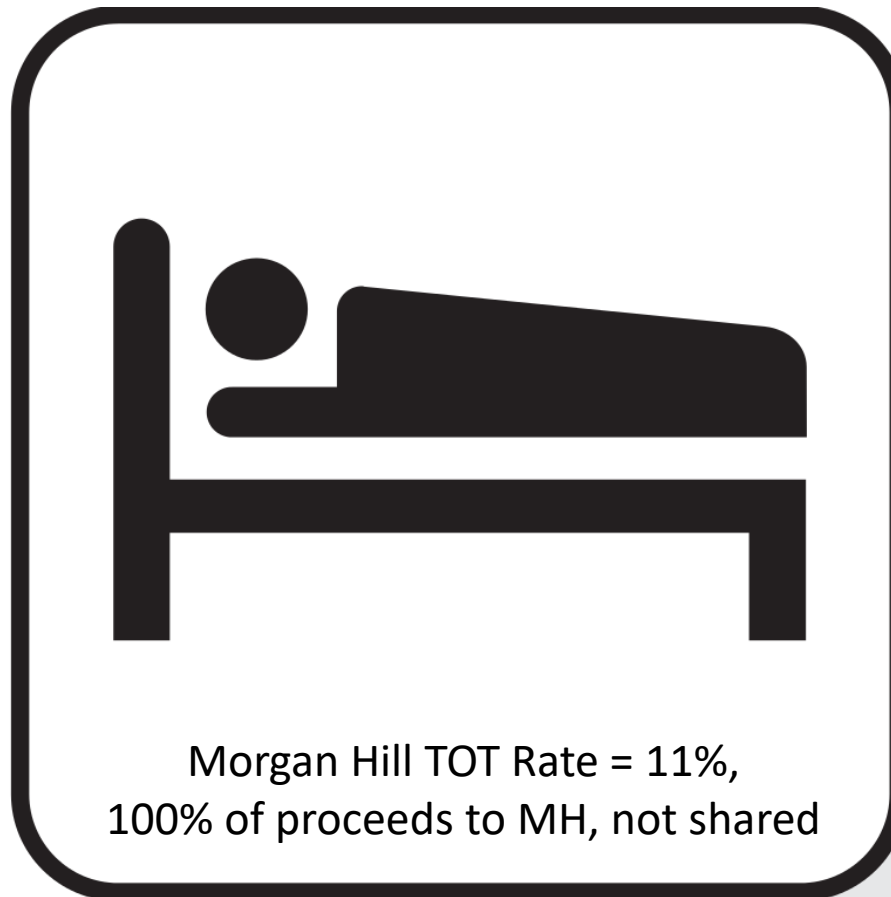
FY 2020-21 = ~~\$7.0~~ **\$6.3M**, 16% of GF

- Recreation
 - Facility Rental Fees
 - Recreation Membership Fees
 - Classes

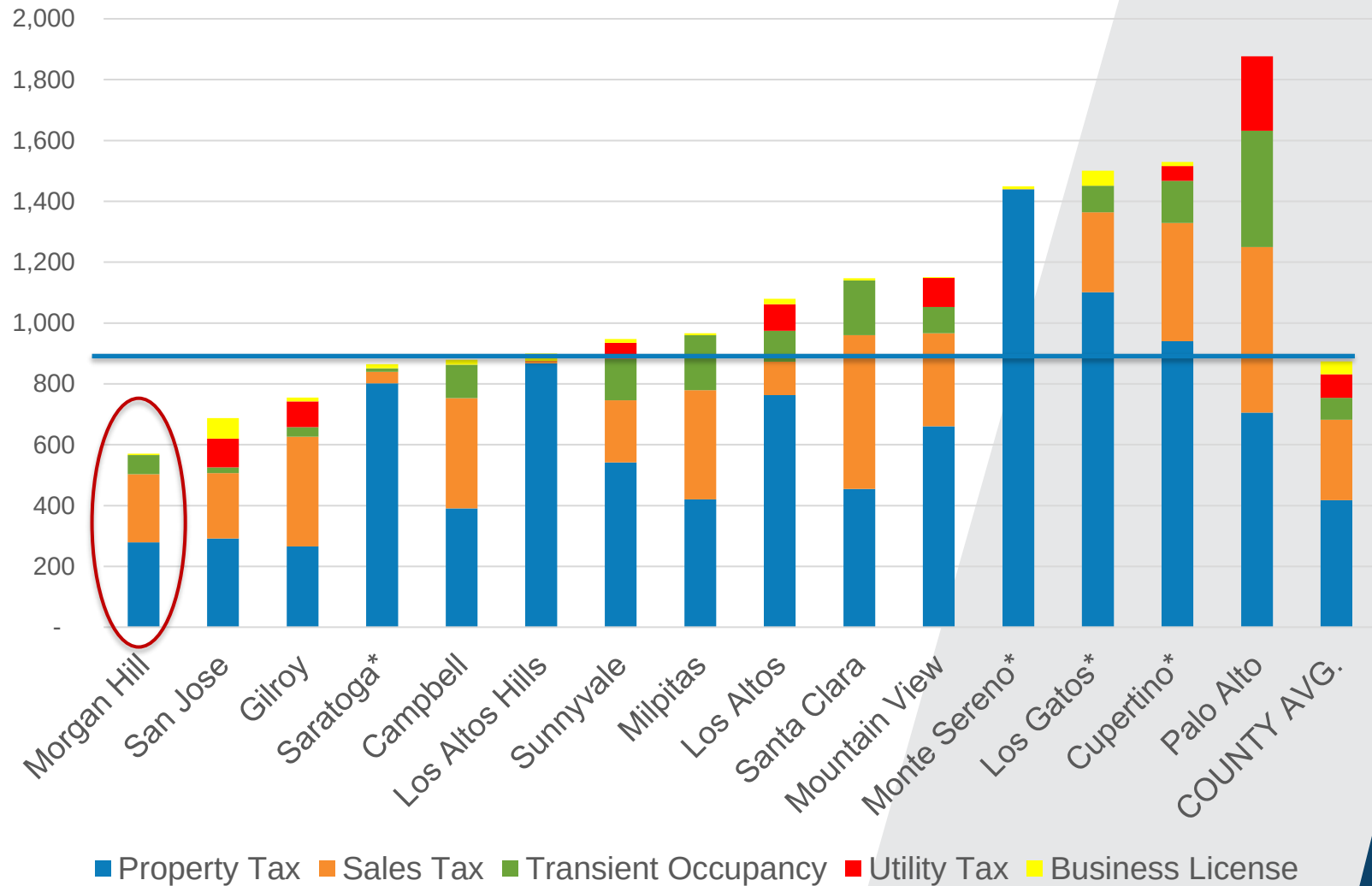


General Fund – Transient Occupancy Tax

FY 2020-21 = ~~\$2.5~~ **\$1.8M**, 5% of GF



General Fund Major Tax Revenue Comparison – Per Capita



*Includes property tax revenues for Santa Clara County Central Fire District

COVID-19 Fiscal Impacts



COVID-19 Economic Recovery Assumptions

Phase I:

- Current estimates are aligned with Phase I
- Shelter-in-place lifted end of May with gradual re-opening
- Recreation facilities open in July with reduced/modified service and hours
- Phase back in services and programs
- Similar fiscal impacts as the Great Recession or worse
- Some fiscal impact from second wave of COVID-19

COVID-19 Economic Recovery Assumptions (cont.)

Phase II

- Extended shelter-in-place
- Extended facilities' closure and slower phasing back in services and programs
- Significant impact from second wave of COVID-19
- More severe fiscal impacts with further reduction in revenues

Fiscal Impacts of COVID-19 on Major Revenue Sources

Property Tax **Loss** Over 3 Fiscal Years

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.1M	\$0.1M	\$0.6M	\$0.8M

Phase I Assumptions:

- Lag effect
- FY2019-20 higher than budgeted
- 0% growth rate in forecast



Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Sales Tax **Loss** Over 3 Fiscal Years (Updated)

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$1.5M	\$1.8 \$2.4M	\$1.5 \$1.6M	\$4.8 \$5.5M

Phase I Assumptions:

- Based on estimates from City's sales tax consultant (HdL), with additional modifications
- Includes Governor's delay/defer assistance programs

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Recreation Services **Loss** Over 3 Fiscal Years (Updated)

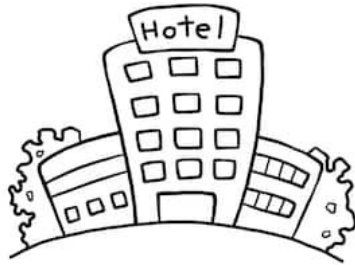
FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.9 \$2.1M	\$0.8 \$1.5M	\$0.4 \$0.9M	\$2.1 \$4.5M



Phase I Assumptions:

- facilities open in July with reduced/modified service and hours
- Decrease in membership and registrants

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)



Hotel Tax **Loss** Over 3 Fiscal Years (Updated)

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.9M	\$0.6 \$1.3M	\$0.2 \$0.3M	\$1.7 \$2.5M

Phase I Assumptions:

- Extended occupancy rate of approximately 20% with slower gradual return to normalcy

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Development (Fund 206) **Loss** Over 3 Fiscal Years **(Updated)**

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$1.2M	\$1.3 \$1.5M	\$0.3 \$0.5M	\$2.8 \$3.2M

Phase I Assumptions:

- Estimated 25% reduction in projects and associated revenues in FY 2019-20 & FY 2020-21
- Slower recovery in development activities (FY2021-22)

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Other (Gas Tax and Property Transfer Tax) **Loss** Over 3 Fiscal Years **(New)**

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.2M	\$0.2M	\$0.1M	\$0.5M

Phase I Assumptions:

- Gas Tax: reduced consumption due to shelter-in-place
- Transfer Tax: reduced revenue due to halt in real estate transactions due to shelter-in-place

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

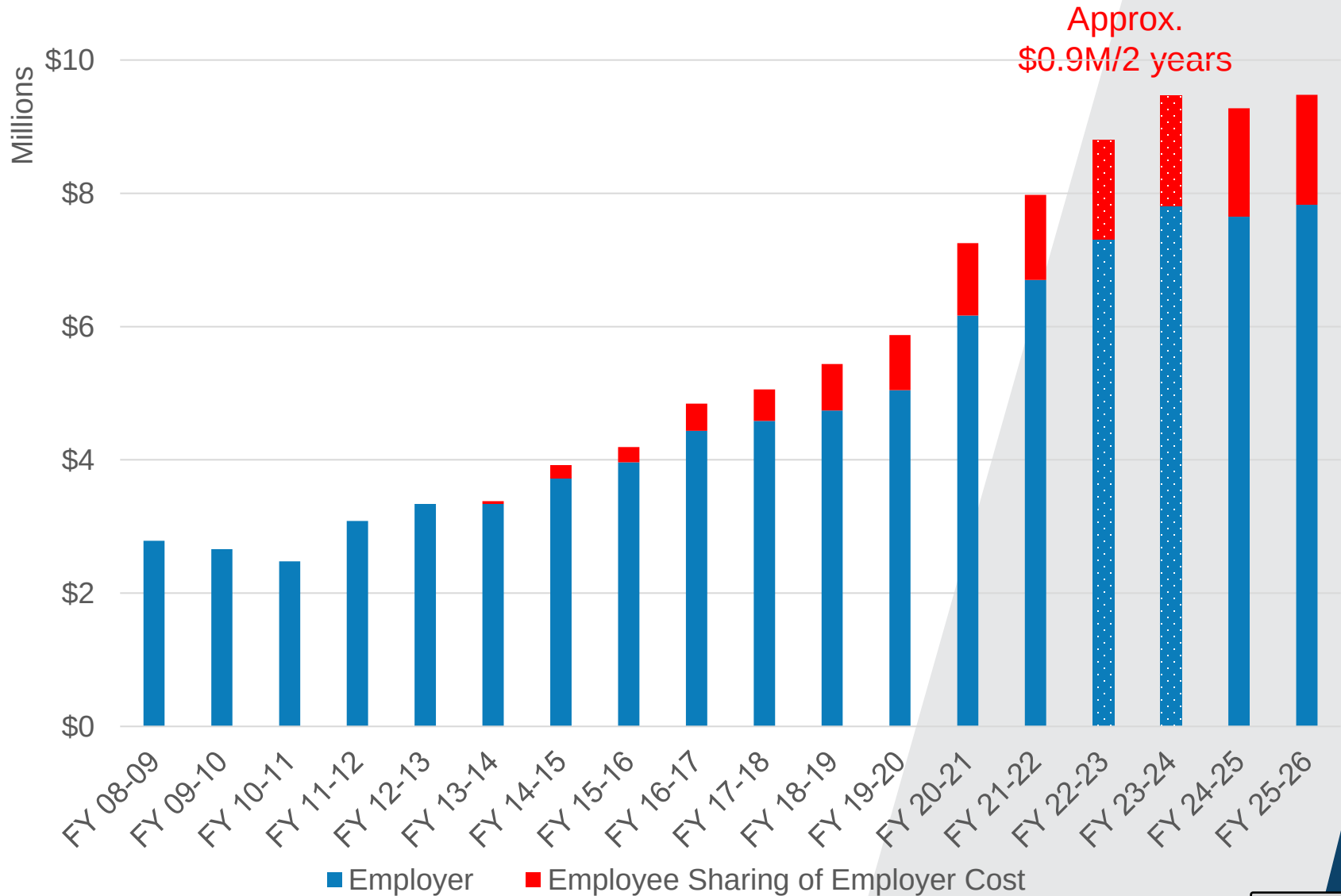
Total Phase I Revenue **Loss** by Major Revenue Categories Over 3 Fiscal Years **(Updated)**

Revenue Type	FY2019-20	FY2020-21	FY2021-22	TOTAL
Property Tax	\$0.1M	\$0.1M	\$0.6M	\$0.8M
Sales Tax	\$1.5M	\$2.4M	\$1.6M	\$5.5M
Recreation	\$2.1M	\$1.5M	\$0.9M	\$4.5M
Hotel Tax	\$0.9M	\$1.3M	\$0.3M	\$2.5M
Fund 206	\$1.2M	\$1.5M	\$0.5M	\$3.2M
Other (Gas Tax, Transfer Tax)	\$0.2M	\$0.2M	\$0.1M	\$0.5M
TOTAL	\$6.0M	\$7.0M	\$4.0M	\$17.0M

Expenditure Adjustments Included in Recommended Budget

- Recreation facility closures
- Recreation cost reductions based on gradual reopening
- Hiring freeze, except public safety
- Election contract services
- Drawdown on General Liability Insurance reserve
- Elimination of all non-essential building maintenance projects

COVID-19 Impact: Pension Cost



Additional Expenditure Reductions and Adjustments



Expenditure Reduction and Adjustments Summary

Fund	Description	YEP 19-20	Rec. 20-21	Rec. 21-22	Total
General Fund (010)	Community Services	\$1.9M	\$1.0M	\$1.1M	\$4.0M
General Fund (010)	Police	\$0.3M	\$0.1M	\$0.1M	\$0.5M
General Fund (010)	Fire	\$0.1M	\$0.3M	\$0.2M	\$0.6M
General Fund (010)	Administration	\$0.2M	\$0.7M	\$0.7M	\$1.6M
General Fund (010)	Development Services	-	\$0.2M	\$0.3M	\$0.5M
Dev. Services (206)	Development Services	-	\$0.9M	\$0.7M	\$1.6M
TOTAL		\$2.5M	\$3.2M	\$3.1M	\$8.8M

Estimated savings previously included in Recommended Budget = \$2.5M
(Building Maintenance, General Liability Reserve Draw, Recreation facilities closure etc.)

Community Services - \$4.0M

- Historic cost recovery rate of 90%
- Should Recreation Cost Recovery not be obtained, other General Fund services will be severely impacted
- Facilities are closed = no revenue

Community Services - \$4.0M (cont.)

Severe impacts are already occurring

- Almost all part-time teammates have been furloughed
- We don't know when and if we will bring them back
- Almost all partner staff at the YMCA are furloughed
- Contractor staff not working

Virtual Membership

- Retaining members for when we re-open
- Only 1% of members have opted to continue to pay to support the virtual membership

Community Services - \$4.0M (cont.)

Re-Opening Facilities

Unknowns

- When can we re-open?
- Under what conditions will we re-open?
- Will members and users come back?

Due to COVID-19 a new baseline must be developed

- Minimize structure to reduce costs
- Different needs for re-opening (cleaning and social distancing)
- Continue virtualization and move to online transactions

Community Services - \$4.0M (cont.)

New Baseline Changes and Budget Reduction Strategy

- New limited hours as Facilities start to open (CRC/AC/CCC)
- Suspend non-fee-based events and promotions
- Suspend operation of Spray Pad at the CCC
- Suspend Masters Swim Program
- Eliminate Marketing and non-fee-based events
- Reduce Mailing of Recreation Activity Guide
- Transfer of resources to future ongoing cleaning and social distancing requirements

Community Services - \$4.0M (cont.)

Staffing Impacts

- Reduce part-time staff, bring back as needed in appropriate roles
- Update partnership with the YMCA
- Reduce 2.5 FTEs in the Recreation Division via retirement, transfer, and elimination of vacant positions
- Redistribution of duties

Community Services - \$4.0M (cont.)

Impacts to Community

- Less available hours for all programming at the CRC and Aquatics Center
- Reduce Senior Center Hours and less managerial oversight (Supervisor will take on other roles, support staff will have less hours to focus solely on Seniors)
- Teen Center will be open only 4 days per week instead of 6

Community Services - \$4.0M (cont.)

Impacts to Community (cont.):

- No special events until funding and staffing levels are restored (Get Fit Event, Summer Fun in the Park, Latin Concert, Latin Zumbathon)
- Spray Pad at the CCC not open until funding and staffing restored
- Reduce Skate Park oversight
- Reduce outreach to gain participation in programs for underserved communities

Community Services - \$4.0M (cont.)

Impacts to Community (cont.):

- Community Promotions and Support for Partner Organizations
 1. Financial Support for Partner Organizations
Hosting Events or Providing Services for the City
 2. Fee Waivers for Rental of Banquet Rooms at CCC
 3. Low Cost or Free Use of Partner Organizations

Police - \$0.5M

Personnel

- Reserve officer pay eliminated (volunteer basis)

Services

- Elimination of cat sheltering and spay/neuter assistance
- Eliminate National Night Out sponsorship, Citizens Police Academy training, Parent Project training, DUI checkpoints supplies and Explorer training
- Other software subscriptions

Fire - \$0.6M

Services

- Savings in CALFIRE contract due to vacancies and/or budget to actuals

Administration/Citywide - \$1.6M

Personnel

- City Manager, City Attorney, and Management, Professional and Confidential COLA eliminated
- Reassign Office Assistant II (.5 FTE) from Recreation to Utility Billing/City Hall
- Eliminate non-CRC gym reimbursement
- Reduction in salary COLA for forecast years by 1%
- Reallocate Assistant City Attorney into GF (25% - additional cost)

Services

- Reduce services, supplies and training

Development Services - \$2.1M

Economic Development

- Reduce PT Temp. staffing
- Reduce supplies and contractual services

Fund 206 loan reduced by \$1.1M to \$1.7M by following actions:

- Reduction of nearly all training and conferences, but for those required for State Certification (ex. Building Inspectors), ISO rating and/or maintenance of Professional Designations (ex. AICP)
- Reduction in Contract Services by 50% (preserved Stormwater and partial outside Plan Check in Land Development Engineering and Building)

Development Services (cont.)

- Terminate contract for Northeast Quadrant Master Urban Design guidance
- Termination of most Part Time employees
- Shift two Current Planners from Fund 206 (Current Planning) to Fund 207 (Long Range Planning) for one year

Development Services (cont.)

- Remove consultant service projects in Long Range Planning with in-house personnel preparation of State-mandated updates to Housing Element and Safety/Hazard Element as well as amendment to Traffic and Circulation Element and newly required Environmental Justice Element
- Remove plans for preparation of Monterey Corridor Specific Plan preparation and related EIR

Development Services (cont.)

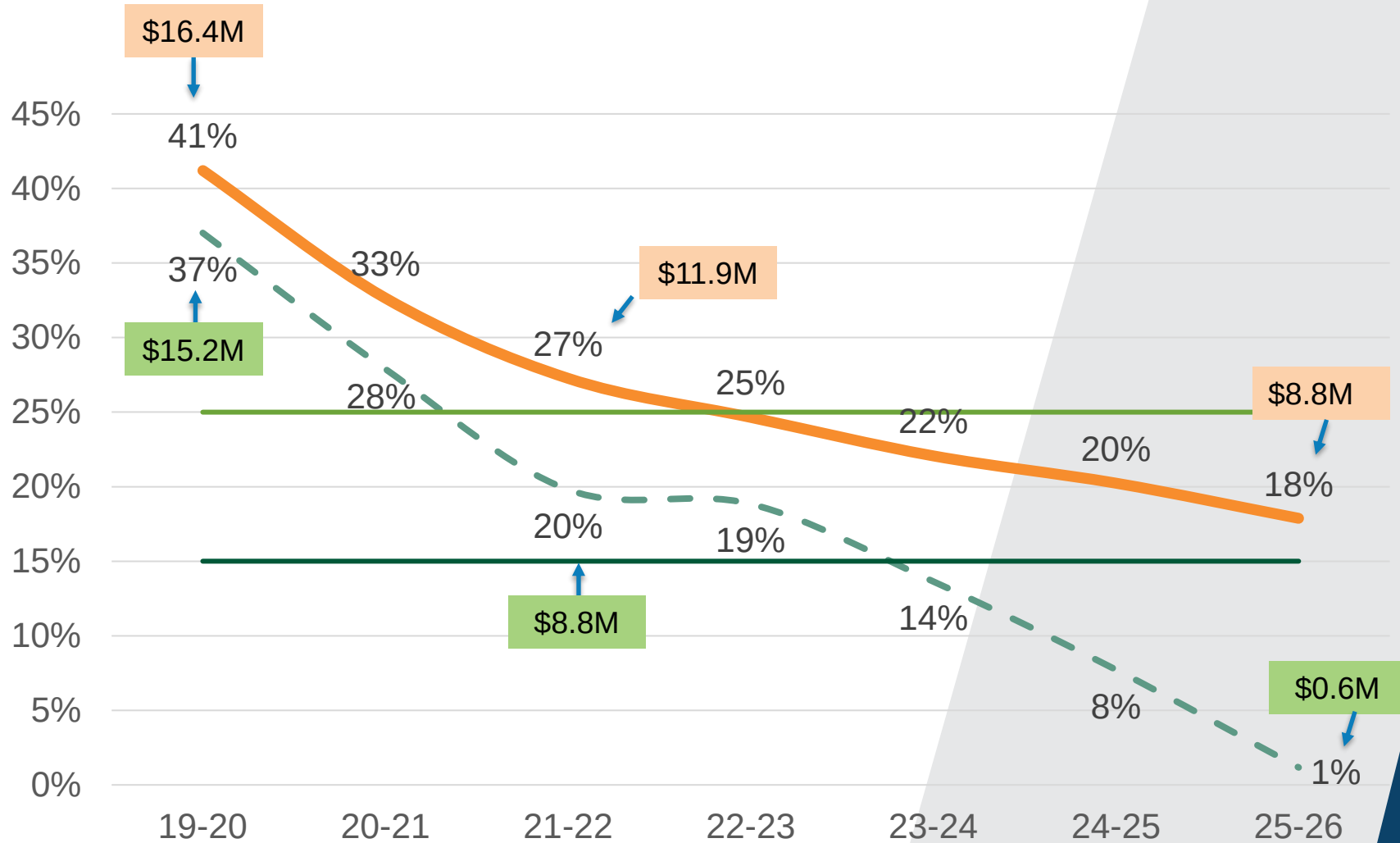
- Restructure Development Services to consolidate Land Development Engineering with Engineering and Utilities under direction of Public Services Director to achieve co-funding and flexibility to engineering functions, reducing cost to Fund 206
- Proposal to fund new development services fee study to reflect appropriate cost recovery revenue on existing permits
- Eliminate funding for Assistant City Manager (Development Services) position in January 2021

Development Services (cont.)

Unrecoverable Expenses:

- **Planning**: \$514K/year – Public counter, general information, strategic initiatives, and special projects
- **Engineering**: \$194K/year – Flood and storm water programs, public counter, general information, and special projects
- **Building**: \$117K/year – Public counter, general information, and code compliance

General Fund Six Year Forecast



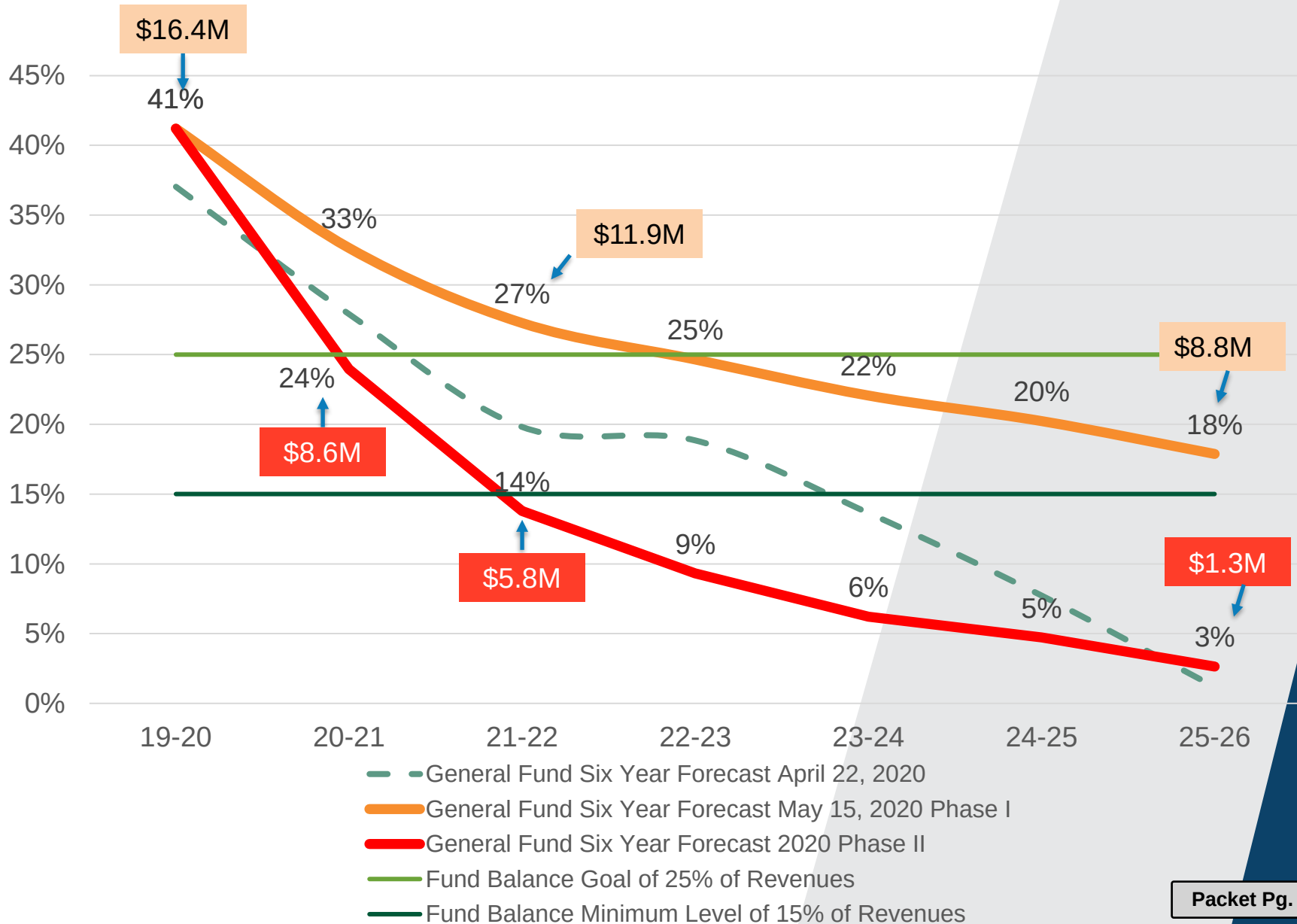
- General Fund Six Year Forecast April 22, 2020
- General Fund Six Year Forecast May 15, 2020 Phase I
- Fund Balance Goal of 25% of Revenues
- Fund Balance Minimum Level of 15% of Revenues

Phase II

(Potential Additional Impacts)



General Fund Six Year Forecast - Phase II



Potential Phase II Expenditure Reductions

- Open all bargaining unit contracts to adjust scheduled COLA, enact furloughs or equivalent reductions
- Further reduction in community programs/services
- Additional Departmental reductions in supplies and services
- Suspend Fleet Replacement Contribution (1 FY)
- Suspend Worker's Compensation Contribution (1 FY)
- Suspend General Fund support for Street CIP
- Suspend OPEB Trust Fund contributions

Interfund Loan Policy



Interfund Loans and Policy

Policy

- Adopted June 7, 2017
- All loans need to be approved by City Council
- Interest rate at investment portfolio or LAIF, whichever is higher
- Maximum term of 10 years

Current Interfund Loans

- Storm Drainage to Traffic Impact for Hale Ave. Extension on October 2018
- \$2.25 million repaid in 3 years

Recommended Reserve Policy

15%: “If reserves do – or are projected to – fall below the 15% minimum level at any time, then policy action must be taken within 30 days of such event or projection to rebuild actual or projected reserves back up to the 15% minimum level within the subsequent 12 months”

25%: “Similarly, if reserves do – or are projected to – fall below the long term goal of 25% at any time, then policy action must be taken no later than the next fiscal year such that structural budget balance is projected to be regained within three years of the 25% floor being pierced. Once structural budget balance is regained, steady progress toward the 25% long-term goal for reserves must continue”

Liquidity and Cash Balance

Liquidity:

General Fund Balance

- Unrestricted, un-designated
- Cash and short-term receivables less short-term payables
- General Fund Reserve of \$17.9M at 6/30/19 mostly comprised of cash and investments of \$16.1M

Liquidity and Cash Balance (cont.)

CASH ACTIVITY SUMMARY FY 2019-20

Fund Type	07/1/19 Balance	Change in Cash Balance	3/31/2020 Balance
General Fund	\$ 16,094,062	\$ (2,968,859)	\$ 13,125,203
Community Development	2,835,370	(1,930,700)	904,670
RDA Successor Agency (except Housing)	10,774,671	3,830,862	14,605,533
Housing Successor Agency/ CDBG	4,065,899	(329,728)	3,736,171
Water - Operations	2,862,753	1,014,788	3,877,541
Water Other	6,212,393	2,351,007	8,563,399
Sewer - Operations	1,677,931	1,301,768	2,979,699
Sewer Other	31,500,213	(613,818)	30,886,395
Other Special Revenue	5,130,146	383,166	5,513,311
Streets and Capital Projects (except RDA)	43,758,217	(5,390,006)	38,368,211
Debt Service	240,894	(119,463)	121,431
Internal Service	15,531,375	1,567,853	17,099,228
Agency Funds (assessment dists./refundable deposits)	4,307,504	(1,716,937)	2,590,567
Total	\$ 144,991,427	\$ (2,620,066)	\$ 142,371,361

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.

Existing Unfunded Needs



Unfunded General Fund Needs

Total Annual Unfunded General Fund Needs = **\$6M**

- Police \$1.3M
- Fire \$2.3M
- Building Maintenance and LAD **\$0.1M Updated**
- Pavement Rehabilitation **\$1.1M Updated**
- Street Maintenance \$0.2M
- ~~Park Maintenance \$0.7M~~ ← Addressed via Quimby Fee
- Operational loss due to RDCS Suspension **\$1.0M**

Unfunded Liabilities



Unfunded Liabilities

Total Unfunded Liabilities = **\$56.4M**

- Public Employees Retirement System (PERS) - \$51.6M
 - Other Postemployment Benefits (OPEB) - \$4.8M
 - General Fund Share = 67% or \$37.8M
- Current Funded Status
 - Misc. Plan = 71.6%
 - Safety Plan = 68.3%

Pension - Funded Status

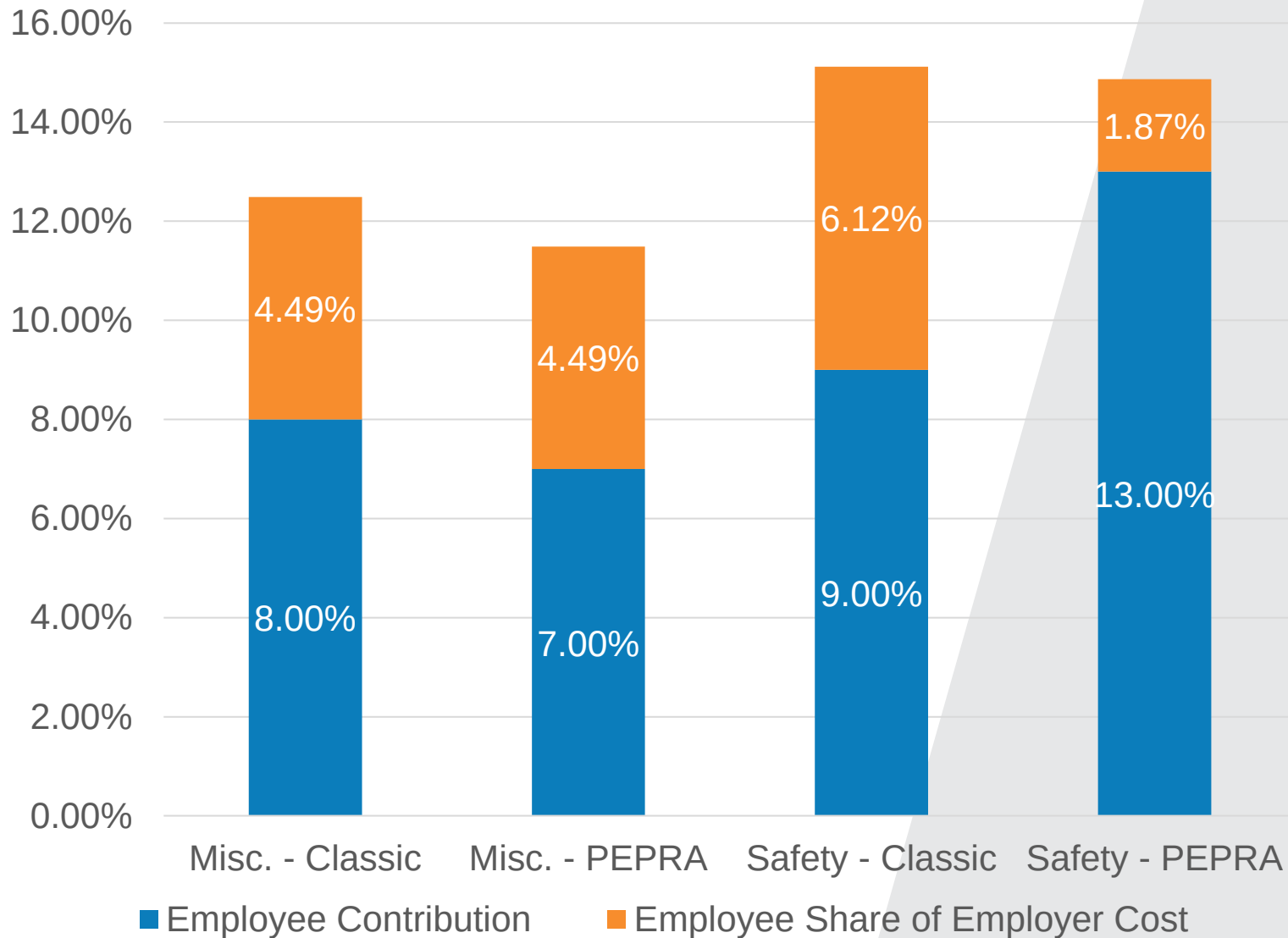
Agency Name	Safety Plan	Misc. Plan
Morgan Hill	68.30%	71.60%
Monte Sereno	N/A	88.20%
Los Altos Hills	N/A	83.60%
Saratoga	N/A	81.80%
Campbell	68.20%	72.20%
Mountain View	69.40%	71.80%
Los Altos	69.30%	70.00%
Santa Clara (County)	67.50%	69.50%
Gilroy	68.10%	68.80%
Sunnyvale	66.40%	68.70%
Milpitas	63.10%	68.50%
Los Gatos	72.00%	68.40%
Cupertino	N/A	66.30%
Palo Alto	62.20%	65.80%
Santa Clara (City)	64.70%	61.00%

Groups	Count	%
Classic	118	67%
PEPRA	57	33%
Total	175	100%

Valuation reports as of FY17-18.

CalPERS funded status for public agencies is 69.8% as of FY17-18.

Pension – Employee Cost Sharing



Pension – Discount Rate Change

- Discount Rate = the expected rate of return on portfolio investments
- In 2016, CalPERS Board changed the discount rate from 7.5% to 7% over three fiscal years, with corresponding incremental increases in payments over 8-year smoothing

Pension – Discount Rate Change

(cont.)

- When the discount rate is reduced, it decreases the funded status
- An additional 0.25% reduction = approximately \$1M/year, before employee sharing
- CalPERS Board may consider an adjustment this fall

Enterprise Funds



Enterprise Funds - Water

- Reduction of revenue to account for bad debt and lower commercial usage offset by increase in grant revenue from Valley Water
 - Anticipate reduced consumption in commercial/industrial, and increased consumption in residential consumption due to shelter-in-place
 - Anticipate increase in bad debt/write-offs due to Governor's order preventing shut-offs
- Groundwater Charge: Valley Water deferring July 1 increase, Board to revisit amount and time in October 2020

Enterprise Funds - Wastewater

- Reduction of revenue by \$300K, to account for bad debt and lower commercial usage
 - No impact of increased residential consumption anticipated as it is based on fixed monthly charge adjusted annually
 - Anticipate increase in bad debt/write-offs due to Governor's order preventing shut-offs
- Planned bond issuance for capital projects outlined in Capital Improvement Program – determining the final amount needed and will return to City Council when appropriate

Sustainable Morgan Hill 2020 – 2021 Strategic Priorities Work Plan Amended



Fiscal Sustainability

- Continue to monitor the COVID-19 impacts and present adjustments as necessary
- Continue the Engage Morgan Hill efforts (conversation about services, funding and priorities)
- ~~Consider a revenue measure in November 2020 (not recommended)~~
- Employ a sustainable budget strategy and identify funding gap
- Define the funding plans for police and fire services, and the City's infrastructure needs

Affordable Housing and Homelessness

- In preparation for the Statewide 6th Housing Cycle, update the Housing Element of the General Plan to respond to new production mandates. The City will actively participate in the development of formula and allocations of “fair share” housing unit assignments
- Engage the community in decisions about where to locate new housing density requirements and necessary on-going changes to objective design criteria which guide quality development
- Continue to respond to the new and proposed housing legislative and policy matters to the benefit of the community

Affordable Housing and Homelessness (cont.)

- Respond to the Governor's 2020 Homelessness initiatives by advocating for direct local dollars and direct access to funding for communities of less than 50,000 population
- Seek out partnerships with non-profit housing developers to create new housing opportunities directly aligned with the City's "fair share" Regional Housing Needs Allocation (RHNA)
- Work with the non-profit owner of affordable units to rehabilitate and extend the life of vital housing supplies at Depot Commons, the Willows, Skeels Hotel, and Villa Ciolino

Community Engagement and Messaging

- Continue to facilitate the Engage Morgan Hill process
- Continue to inform the community about significant development projects
- ~~Provide outreach and engagement with the community on the 2020 United States Census (Completion in August)~~
- Continue to find better ways to reach members of the community that do not speak English
- **Continue to explore, implement and improve upon the use of tools that allow for virtual meetings, communication and engagement**
- **Continue to monitor and evaluate communication and engagement tools and strategies with a continuous improvement focus**

Economic Development

- Complete Request for Proposal (RFP) process and select provider for telecommunications services for City facilities
- Complete an Industrial Land Preservation Policy
- Complete a Retail Concentration Strategy
- Economic Development Outreach and ~~Education/Awareness Campaign~~
- **Business Resiliency Program**

Transportation

- Respond to the Environmental Impact Report on the High-Speed Rail Authority's (HSRA) preferred alternative
- Continue efforts on Hale Avenue extension
- Advocacy will include:
 - Working with the Valley Transportation Authority (VTA), Caltrain, the County, the HSRA and the State to enhance service, secure funding for transportation projects and road maintenance, and protect the community from negative impacts of regional projects
 - Expansion of Highway 101 between Morgan Hill and Gilroy to reduce pass-through traffic and improve commute traffic for South County residents
 - Electrification of commuter rail from San Francisco to Gilroy
 - Funding for priority projects in the South County

Strategies to Address Revenue Impacts



Multiple Ways to Address Revenue Impacts

- Use of reserves/fund balance ✓
- Reduce expenditures ✓
- Seek COVID-19 State and Federal Funds as available ✓
- New revenue sources including ballot measures and Community Facilities District (CFD)

Other Strategies

- Spending money strategically to virtualize (CRM system, Laserfiche, broadband investment, etc.)
- Spend now to save in the future
- Keeping our core services so we can bring services and teammates back as we recover

Capital Improvement Program



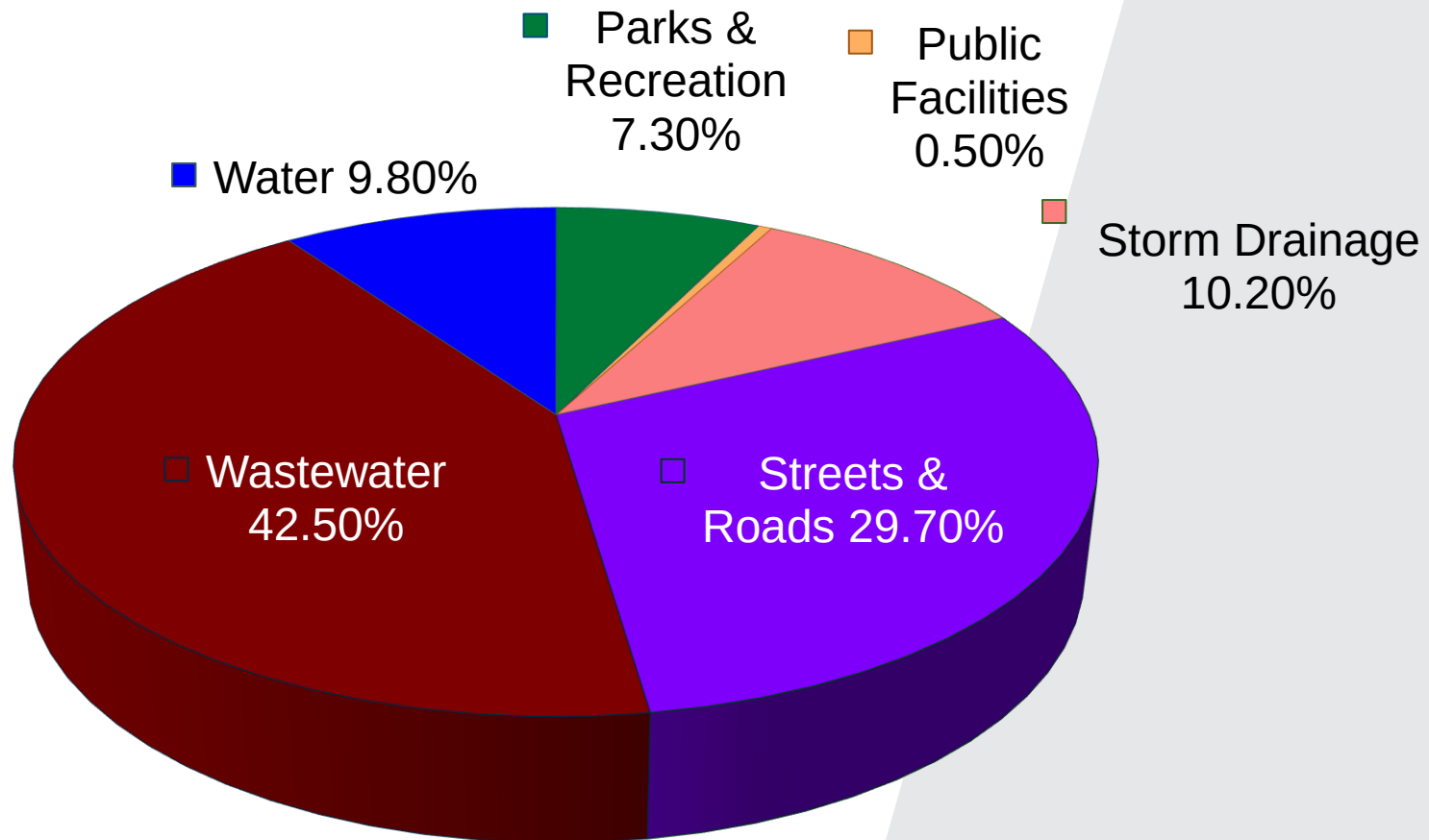
Purpose

- Present FY 2020-21 to 2025-26 Capital Improvement Program
- Discuss Key Projects
- Provide input and feedback on proposed CIP

Capital Improvement Program Summary (Updated)

Project Categories	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	Totals
1 Parks & Recreation	\$1,998,888	\$3,610,000	\$4,680,000	\$3,250,000	\$2,850,000	\$1,550,000	\$17,938,888
2 Public Facilities	\$140,000	\$220,000	\$5,300,000	\$220,000	\$500,000		\$6,380,000
3 Storm Drainage	\$5,500,000	\$2,370,000	\$2,650,000	\$350,000	\$2,650,000	\$350,000	\$13,870,000
4 Streets & Roads	\$19,150,000	\$3,780,000	\$4,650,000	\$4,150,000	\$4,150,000	\$4,200,000	\$40,080,000
5 Wastewater	\$19,056,599	\$13,706,786	\$27,468,322	\$24,843,700	\$6,331,200	\$2,393,700	\$93,800,307
6 Water	\$2,841,023	\$4,743,913	\$6,722,065	\$2,700,000	\$1,300,000	\$400,000	\$18,707,000
Totals	\$48,686,510	\$28,430,699	\$51,470,387	\$35,513,700	\$17,781,200	\$8,893,700	\$190,776,196

Budget by Project Category FY 2020-21 and 2020-22



Capital Improvement Program

Top 8 Projects FY 2020-21 & FY 2021-22

1. Hale Avenue Extension - \$16.8M
2. Sewer System Repair and Replacements - \$13.1M
3. Sewer Plant Expansion - \$11.8M
4. Pavement Rehabilitation Program - \$6.1M
5. Llagas Flood Control - \$4.5M
6. Water Supply Facility and Water Pipeline Repair and Replacement - \$3.1M
7. Storm System Expansion - \$2.7M
8. Borello School/Park - \$2.0M

Guiding Principles

- Projects must be consistent with the goals of the General Plan
- Projects included in an adopted Master Plan
- City Council priorities
- Addressing a maintenance or deficiency issue
- Available revenues to pay for project
- Long term maintenance is considered
- Legal uses of funds

CIP Changes from April 22

- Reduced revenue assumptions related to development impact fees
- Reduced revenue assumptions for Measure B and SB1
- Added Non-Profit Center Project

Current Projects Underway

- Magical Bridge Inclusive Playground Project
- Tennant Sewer Main Project
- Pedestrian Safety Projects
- Main Avenue Bike Lanes
- Madrone Channel Trail Project
- Butterfield Path Project
- CRC and Library Expansions

Parks and Recreation Highlights FY 20-21 & 21-22 Projects

Borello School Park - \$2M

- Joint park/school site off Peet Road

West Little Llagas Creek Trail - \$850,000

- Class 1 Trail south of Watsonville Road
- Primarily grant funded
- Limited additional maintenance necessary

Park Renovations - \$500,000

- Upgrade existing park and recreation facilities
- Support cost recovery

Parks and Recreation Highlights FY 20-21 & 21-22 Projects (cont.)

Sports Facility Planning- \$100,000

- Condit Road Facilities Concept Master Plan
- Environmental Review

Park Land Purchase- \$500,000

- Potential land bank of neighborhood park

Non-profit Center - \$800,000

- Development at CCC
- Will recover cost through tenant leases

Parks and Recreation Highlights Post FY21-22



5.a

- Potential Sand Volleyball Facilities
- Villa Mira Monte Expansion/Renovation
- Park and Recreation Facility Renovations
- Begin banking funding for Ball Field Center

Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Public Facilities Highlights

- New Fire Station - \$5.3M
Construction Commences FY22-23
- Police Department Expansion FY24-25

Storm Drainage Highlights FY 20-21 & 21-22 Projects

Llagas Flood Control - \$4.5M

- Project addresses storm water conveyance infrastructure that drains into the Upper Llagas Creek Flood Protection Project

Storm System Expansions \$2.5M

- Butterfield Basin Expansion
- Other future expansion projects

Trash Compliance - \$50,000

- Infrastructure planning for future mandated compliance projects

Streets and Roads Highlights FY 20-21 & 21-22 Projects

Pavement Rehabilitation- \$5.8M (2 years)

- Annual program intended to address City's pavement rehabilitation needs
- Primarily dedicated funding sources

Hale Avenue Extension \$17M

- Construct Hale Ave from Main to Spring Ave
- Primarily grant funding for construction
- Land acquisition and design completed (\$10M)

Sidewalk Repairs- \$150,000/yr

- Annual program to address damaged sidewalks

Wastewater Highlights FY 20-21 & 21-22 Projects



5.a

Sewer System Repair & Replacements - \$13.1M

- Implement the required repairs and improvements needed to reduce inflow and infiltration

Treatment Plant Expansion (SCRWA) - \$31.5M

- Increased treatment capacity based on flow and organic loading

Wastewater Highlights

FY 20-21 & 21-22 Projects (cont.)

Lift Station Improvements - \$2.1M

- Renovate existing lift stations and force mains

New Trunk Line - \$29.2M

- Planning phase next 2 years
- Construction planned for FY22-23

Wastewater Planning - \$230,000

- Update plans including Master Plan

Water Highlights

FY 20-21 & 21-22 Projects

Well Demolition and Abandonment - \$700,000

- Required demolition of unused wells

Water Pipeline Repair and Replacement \$1.7M

- Various pipeline improvements to address aging infrastructure and reliability issues in the water distribution system

Holiday Lake Reservoir Improvements- \$6M

- Infrastructure improvements (pipes, storage, and pumping capacity) to Holiday Lake water systems to increase water delivery and reliability in the area

Unfunded or Partially Funded Projects

- Ball Field Development
- New Bike and Pedestrian Safety Projects
- Traffic Signal Pre-emption
- Corporation Yard Expansion/Renovation
- Storm System Trash Compliance

Commission Action

- **Planning Commission Meeting 5/12:**
 - Found the proposed CIP consistent with the General Plan
 - Expressed a desire to increase General Fund Spending on Pavement Rehab
- **Parks and Recreation Commission Review:**
 - Scheduled for June 19

Questions?



Engage Morgan Hill Community Advisory Group Input



Questions & Answers Public Comment Council Discussion



Next Steps



Upcoming Important Dates

Time	Date	Event	Location
7pm	Wednesday, June 17 th	City Council Budget Hearing/Adoption	TBD

Questions?



CITY OF MORGAN HILL

Fee Waiver and Community Use

Presentation to Council for Budget Workshop

Community Services Staff believe there are three areas that should be discussed with the Council as part of the budget reduction strategy. These areas include:

1. Financial Support for Partner Organizations Hosting Events or Providing Services for the City
2. Fee Waivers for Rentals of Banquet Rooms at the Community and Cultural Center
3. Low Cost or Free Use for Partner Organizations

Below is a summary for each area along with specific recommendations.

Area 1: Financial Support for Organizations Hosting Events or Providing Services for the City

The funding for each of the groups is budgeted in the City Council Community Promotions funding or in the Community Services Division budget and supported entirely by the General Fund. Staff is recommending reductions in the funding for these organizations. Should the City's fiscal situation improve, funding may be restored.

Group	Detail
Morgan Hill Downtown Assoc (MHDA) Safe Trick or Treat & Holiday Tree Request \$12,000 (\$6,000 for each) Recommendation \$6,000 Total	In conversations with the MHDA, the group indicated if provided limited funding it will support the Holiday Tree over the Safe Trick or Treat event. Given the current scenario, both the MHDA and City staff believe the Safe Trick or Treat is highly unlikely to be held in 2020.
Morgan Hill Kiwanis Club Holiday Lights Parade Request \$6,000 Recommendation \$4,500	The Kiwanis have not discussed as a group, but event representatives have noted that if funding is at 50%, event will be significantly reduced, if there is no funding, they would not host the event.
Independence Day Celebrations Freedom Fest Events Request \$30,000 Recommendation \$15,000	It is unknown if any events at all will occur in 2020. If the funding was reduced by 50% in future years, the group noted they will try to adapt and may do less. Their priorities will be the fireworks and parade. The \$30,000 request was a significant increase from prior years (\$24,000).
South Valley Civic Theater Past Annual Funding \$10,000 Recommendation \$2,500	This funding supports educational outreach activities, tickets, and cast fee waivers to increase access to participants and audiences. These programs would be reduced should funding be reduced.
Healthier Kids Foundation (HKF) Past Annual Funding \$20,000 Recommendation \$10,000	HKF uses the City's funding as a match for their own funding, which allows for Morgan Hill to receive more significant support than other communities. If funding were eliminated the program would be severely reduced in Morgan Hill, not only reducing Morgan Hill funded programs, but also the matching funding provided by HKF. HKF would be able to continue services for an unknown number of years in a more limited capacity with a 50% reduction in funding.
Morgan Hill Historical Society (MHHS) Past Annual Funding \$20,000 Recommendation \$15,000	MHHS uses the funding to maintain Villa Mira Monte. Should the MHHS become insolvent, the site would revert to ownership by the City. This could create increased costs for the City. The group is conducting review of minimum cost structure to maintain facility and landscaping.
United Way 211 Past Annual Funding \$5,000 Recommendation \$0	While the City approved this funding on request from the organization, it was never invoiced to the City nor has the City paid into this in the past.
Boys and Girls Club (BGC) Park Place Program Past Annual Funding \$72,000 Recommendation \$45,000 Friendly Inn Program	Per the Friendly Inn Lease agreement, the BGC will receive \$6,000 in FY 20/21 and \$3,000 in FY21/22 and then no funding support for Friendly Inn operations in future years. The BGC separately runs the after-school program at Park Place for the City. The City is recommending funding for that program be reduced from \$72,000 annually to \$45,000 annually. This will reduce staffing levels, but still allow the program to continue.

Recommendation: \$6,000 FY20/21,
\$3,000 FY21/22, \$0 Future years

Area 2: Fee Waivers for Rentals of Banquet Rooms at the Community and Cultural Center

The following groups request a waiver of fees annually for their events. The Council could consider reducing or eliminating these fee waivers. Fee waiver requests total approximately \$6,000. City staff is recommending reducing fee waivers for these groups to 50%.

Indian Association of South Santa Clara County Flag Raising Event Fees Waiver Request: \$615	The fee waiver is for the use of amphitheater. The organization pays for City event staff time. Should the fee waiver be eliminated or reduced, IASSC would likely scale down the event, with a flag raising at the CCC and a smaller celebration at a picnic area if available. It is not likely the City would be able to generate significant revenue during the time booked as the Amphitheater is not in high demand during the time of this booking.
AAUW Annual Women's Conference Fees Waiver Request: \$2,466	The fee waiver is for use of Full CCC Facility on a Saturday. The organization pays for City event staff time. The AAUW noted they would likely be able to hold a conference with a 50% fee waiver through securing other sponsors or scaling it back a bit. If the entire waiver were eliminated, it would be very difficult, and the organization would have to re-evaluate the event. The event is scheduled to allow for evening bookings of the major banquet rooms at the CCC in the evening, therefore potential revenue is not lost with the hosting of the event.
Morgan Hill Community Foundation Philanthropy Night Event Fees Waiver Request: \$3,000	The fee waiver is for use of Full CCC Facility on a Friday. The organization pays for City event staff time. Should the City reduce or eliminate the fee waiver, the MHCF would continue to host the event but may look for an alternative venue. The group would need to reduce the amount they are able to grant out to local organizations or services. The City would make the Friday night available for booking and may receive rental revenue, should the MHCF not host this event.

Area 3: Low Cost or Free Use for Partner Organizations

The City provides low cost use of the City's small meeting rooms for Community organizations for an \$18 daily use fee. If the City were able to collect full pricing for these uses, the costs and revenue would total over \$17,000 annually. However, after conversations with the 20+ organizations booking under the Community Use Policy, it appears almost all of them would be unable to pay for any significant cost increase and would stop using the facility. For this reason, staff is not recommending any changes to the Community Use Policy.

In addition to the Community Use Policy, the City's rental policy allows for partner organizations to utilize City facilities at no cost. These are partners with the City via contract or government organizations providing service to Morgan Hill and include organizations such as the South County Youth Task Force, County of Santa Clara, the Red Cross and others. While most of these organizations would not pay a fee, these uses are noted as they take up City staff and resources. City staff are not recommending changes in this area at this time but may do so in the future should more long-term changes be necessary.

PRINCIPLES TO GUIDE THE SUSTAINABLE BUDGET STRATEGY

The City Council has adopted the following principles to guide the Sustainable Budget Strategy:

- A. Critical services should be maintained to the greatest extent possible.
- B. Resources should be allocated to the highest priority services.
- C. No city services or functions should be exempt from evaluation.
- D. “Across the Board” approaches shall be avoided because they are not aligned with the Council’s and community’s priorities.
- E. Reductions in service should position the City to take advantage of economic recovery.
- F. Budget reductions should be ongoing and not simply “one time only.”
- G. Council should commit to support employees during the transition and assist those who may be adversely impacted.
- H. Employees and their recognized bargaining units should be actively involved in developing options and implementing the transition.
- I. The City should continue to invest in building organizational capacity by supporting training and employee development.
- J. Community wide tax resources should be allocated first to support community wide services.
- K. Special services designed for only a few should be paid for by user charges and fees.
- L. Administrative and operational efficiencies should be maximized before pursuing new tax revenue.
- M. Reserves and one-time revenues should be used first to invest in capital outlay items that could reduce long range operating costs and, thereafter, fund transition expenses.
- N. New services should not be added, nor existing services expanded unless they are highly valued by the community and there is a willingness to pay for them.
- O. There should be regular monitoring of financial performance and opportunities to make mid-course corrections as warranted.
- P. City policies that may inhibit economic development, especially new retail development, should be reviewed regularly and modified.

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
General Fund

Item #	Department	Revenue/ Expenditure	Description	19-20	20-21	21-22
1	Recreation Service Fees	Revenue	Recreation facilities closure through June 30	(1,200,000)	(673,664)	(446,679)
2	General Fund Taxes	Revenue	Sales Tax		(581,000)	(100,000)
3	General Fund Taxes	Revenue	Transient Occupancy Tax (TOT)		(681,000)	(32,000)
4	General Fund Taxes	Revenue	Other Taxes	(200,000)	(150,000)	(50,000)
Total Revenue Adjustments				(1,400,000)	(2,085,664)	(628,679)
5	Administrative Services	Expenditure	Reallocation of Assistant City Attorney - 25%		(59,596)	(61,906)
6	Administrative Services	Expenditure	Reassign Permanent Part-Time Office Assistant II from Community Services to City Hall		24,000	24,480
7	Administrative Services	Expenditure	Elimination of Non-Centennial Recreation Center (CRC) gym reimbursement		9,000	9,000
8	Administrative Services	Expenditure	City Manager, City Attorney, Management, Professional, and Confidential COLA elimination		71,000	142,000
9	Administrative Services	Expenditure	Human Resources: Reduce/eliminate employee City-sponsored events		7,500	7,650
10	Administrative Services	Expenditure	Council Services and Records Management: New agenda management system		-	11,000
11	Administrative Services	Expenditure	Council Services and Records Management: Reductions in supplies and services		6,500	6,630
12	Administrative Services	Expenditure	Reduce scope of TOT Audits		20,000	20,400
13	Administrative Services	Expenditure	City Manager: Reductions in supplies and services		14,200	14,484
14	Administrative Services	Expenditure	City Attorney: Reductions in supplies and services		21,500	21,930
15	Administrative Services	Expenditure	Laserfiche Annual Contract Increase		(8,515)	(8,685)
16	Administrative Services	Expenditure	Revised loan from the General Fund to Development Services Fund	3,714	647,636	546,088
17	Administrative Services	Expenditure	Revised Year End Projections	193,615		
18	Community Services	Expenditure	Reduction of future building replacement charges (addressed via Quimby Fee)		87,998	90,638
19	Community Services	Expenditure	Eliminate pay increases for Part-Time Temporary employees		45,000	45,000
20	Community Services	Expenditure	Land Development Engineering reorganization		(10,541)	(11,401)
21	Community Services	Expenditure	Recreation and Community Services reorganization		760,000	860,000
22	Community Services	Expenditure	Revised Year End Projections	937,550		
23	Community Services	Expenditure	Reduce service offering at Park Place		30,000	30,000
24	Community Services	Expenditure	Reduce community promotions funding for two years (for details see additional supplement)		61,100	64,100
25	Community Services	Expenditure	Transfer from General Fund to Streets CIP for pavement rehab	1,000,000	-	-
26	Economic Development	Expenditure	Eliminate Part-Time Temporary position in Economic Development		36,400	37,128
27	Economic Development	Expenditure	Development Services reorganization		98,817	205,723
28	Economic Development	Expenditure	Reduction in supplies and services in Economic Development		57,025	58,166
29	Fire	Expenditure	CAL FIRE Contract - Personnel estimated savings	100,000	250,000	200,000
30	Police	Expenditure	Revised Year End Projections	304,489		
31	Police	Expenditure	Eliminate City services for cat sheltering and City's contribution for spay/neuter assistance		35,000	35,700
32	Police	Expenditure	Eliminate Parent Project Training Program		3,000	3,060
33	Police	Expenditure	Eliminate Citizens Police Academy Training Program		7,800	7,956
34	Police	Expenditure	Eliminate annual National Night Out event sponsored by Police Department		10,000	10,200
35	Police	Expenditure	Eliminate DUI Checkpoints		2,500	2,550
36	Police	Expenditure	Eliminate community outreach software platform		7,920	8,078

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
General Fund

Item #	Department	Revenue/ Expenditure	Description	19-20	20-21	21-22
37	Police	Expenditure	Eliminate PD fleet maintenance software subscription		5,000	5,100
38	Police	Expenditure	Eliminate emergency maintenance contract for PD Mobile Command vehicle (shared with the City of Gilroy)		12,500	12,750
39	Police	Expenditure	Eliminate Explorer Training/Conference		5,200	5,304
40	Police	Expenditure	Transition paid Reserves to unpaid		22,000	22,440
Total Expenditure Adjustments				2,539,368	2,279,944	2,425,563

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
Development Services Fund

Revenue/ Item # Expenditure	Description	19-20	20-21	21-22
1 Revenue	Additional revenue loss		(228,000)	(135,000)
Total Revenue Adjustments		-	(228,000)	(135,000)
2 Expenditure	Eliminate Part-Time Temporary employees in Planning		93,980	128,640
3 Expenditure	Move Senior and Associate Planner to Long Range Planning for one year		389,529	-
4 Expenditure	Land Development Engineering reorganization		210,821	228,011
5 Expenditure	Reallocation of Assistant City Attorney - 25%		59,596	61,906
6 Expenditure	Building: Reductions in supplies and services (contract services)		75,000	150,000
7 Expenditure	Planning: Reductions in supplies and services (training and education)		10,000	10,000
8 Expenditure	Land Development and Engineering: Reductions in supplies and services (contract services)		100,000	102,000
9 Expenditure	Development Services Fee Study		(60,000)	
Total Expenditure Adjustments		-	878,926	680,557



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

RECOMMENDATION(S)

Review and provide direction on the Economic Development Business Recovery Work Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint

POLICY CONSIDERATIONS

Should the Economic Development team realign priorities to address the economic crisis caused by the COVID-19 pandemic?

Should the City invest additional resources to implement an Economic Recovery Plan?

What are the activities that should be prioritized for Economic Development?

REPORT NARRATIVE:

The economic landscape has been drastically impacted by the COVID19 pandemic. Since the March 16th Shelter-in-Place (SIP) Order by the County of Santa Clara Public Health Department, most of the City's businesses have experienced closures or decreased production and hotels are functioning at record-low occupancy rates. This pandemic has created an economic crisis that is affecting all, including the City of Morgan Hill as it relates to tax revenue; including sales, property, transient occupancy and gas, and also recreation and development services revenues.

Over the past few months, the City's Economic Development team has provided support to businesses during this pandemic with the following activities:

1. Information on Business Resources:

The City has created a Business Resources webpage with information on various (local, state, and federal) loan assistance programs, tax assistance, and other resources. Three newsletters have been sent to all businesses with information on the latest financial and technical resources.

2. Business Outreach:

In partnership with the Chamber of Commerce and Visit Morgan Hill, a survey was sent to all businesses to better understand business impacts and needs. In addition to electronically deploying the survey, a post card was mailed to all businesses and calls were made to the top 100 employers and sales tax generators.

3. Outreach to Developers:

Outreach is underway to developers processing commercial and industrial projects. Many of these projects are impacted and may be delayed and/or may need to be value-engineered.

4. Technical & Financial Assistance:

The City is collaborating with the Small Business Development Center (SBDC) and the National Development Center to provide much needed financial assistance and technical support. Many Morgan Hill businesses have applied for the Economic Injury Disaster Program through federal Small Business Administration (SBA) that offers up to \$2 million in debt to small businesses, non-profits, and sole proprietors and for the Paycheck Protection Plan (PPP) that offers up to \$10 million and includes a loan forgiveness associated with re-employing or paying salary to affected employees up to eight weeks.

5. Business Resiliency Roundtables:

The team has hosted five Business Resiliency Roundtables on Financial Resources, Communications Strategies, Retail, Tourism, and Manufacturing. These roundtables include industry experts as guest speakers and offer a platform for businesses to share ideas and best practices. Attached is a summary of the findings from the Business Resiliency Roundtables (Attachment 1). A final roundtable for restaurants is scheduled for May 19th.

6. Post COVID-19 Economic Recovery:

Many of the small businesses will be challenged to survive the SIP. Industries may need to re-imagine business plans, creating new coping strategies for ongoing or repeated social distancing restrictions. These realities will impact business models for private, public (government) and non-profit organizations alike. Organizations will need to redesign workspaces, explore different delivery models like developing multiple shifts and alternate work schedules to reimagine the way people gather and convene.

The Economic Development team is compiling a list of strategies to support the economic recovery brought up at the Business Resiliency Roundtables, City Council meetings, and Townhall meetings. These ideas range in levels of complexity, ability to influence the City's financial recovery, and alignment with City's goals. Attachment 2 outlines how some of these ideas align and/or support City policies, shopping districts and industries. It also begins to identify if the recommendations require additional funding resources.

At the May 6, 2020 Council meeting, the City Council directed staff to develop recommendations for an economic recovery plan that responds to the needs of the local business community. The Council asked for strategies to support businesses; solutions by area and by industry; to explore collaborative solutions with non-profits, community and/or business organizations; and to review City policies that can support big and small, existing, and new businesses and developments.

Prior to the COVID-19 pandemic, the Economic Development team's work program was already focused on creating fiscal sustainability by growing existing companies, attracting new industry, growing professional jobs; and advancing goals for healthcare, retail, and tourism. The current goals for Fiscal Year 2020-21 include:

1. **Industrial Preservation Policy:** Update the Industrial Lands Analysis and develop a fiscal analysis of industrial areas that will help shape land use decisions that protect the job creating lands, further strengthening the General Plan (Fiscal Sustainability, Economic Development)
2. **Retail Concentration Strategy:** Develop a policy to strengthen retail nodes and identify requirements that pose impediments for retail and identify areas where retail is not likely to succeed (Economic Development)
3. **Property Business Improvement District:** Work with the Downtown businesses to create a Business Improvement District for property improvements and marketing and promotion for Downtown (Economic Development)
4. **High Speed Rail:** Respond to High Speed Rail's Environmental Impact Report/Study and advocate for mitigations including grade separations for traffic and circulation safety (Transportation, Advancing Regional Initiatives)
5. **Telecommunications RFP:** Commence contract negotiations with service provider to service City facilities and explore enhanced connectivity to residential and commercial neighborhoods (Fiscal Sustainability, Economic Development)
6. **Healthcare:** Assist with the County of Santa Clara's efforts to revitalize the DePaul Health Center, update the Healthcare Market and Service Needs Study and work with other healthcare providers to facilitate expansion of services in Morgan Hill (Supporting our Youth, Seniors, and Entire Community)
7. **Impact Fee Freeze Program:** Perform an evaluation of the program and develop program modifications as an ongoing City program (Economic Development)
8. **Urban Land Institute (ULI) Fall Conference:** Participate with the Silicon Valley Economic Development Alliance to host a program during the 2020 Fall ULI Conference taking place in San Francisco (Economic Development)
9. **Events, Marketing, and Promotions:** Build on the success of 2019 Choose Morgan Hill events, continue to enhance the economic development conversation at a local level. Host a second annual Speaker Series, Wine Stroll VIP business appreciation luncheon, host a Broker Breakfast Retail Runway in partnership with San Jose and Gilroy, and host annual Manufacturing Day (Economic Development)

The above work program continues the implementation of the City's 2017 Economic Blueprint, which is the City's strategy for economic sustainability. The Economic Blueprint is the result of a two-year effort that received hundreds of community inputs and was thoroughly vetted with industry experts and economic development peers to ensure the activities (actions and strategies) would have positive financial return on investment trackable by the tangible economic indicators.

An Economic Recovery Plan to support the business community and the City's economic recovery should consider the existing federal and state economic recovery programs, the local cost to address the impact of a global crisis, alignment with City goals and policies, complexity to implement, and the ability to meaningfully impact the businesses and the City's economic recovery. While there are dozens of strategies identified in Attachment 2, limited resources, coupled with an already robust work program should be considered when identifying priorities for the City's Economic Recovery Plan.

Cost	Alignment	Complexity	Impact
•Financial costs •Manpower requirements	•General Plan •Economic Blueprint •Telecommunications •Other	•Ease to implement •Timing •City Control	•Measures of Success •Opportunity Cost •Prioritization

Focused Economic Recovery Plan

The Economic Development team will continue to implement 7 of the 9 key goals listed in the 2020-21 work program, including:

1. **Industrial Preservation Policy**
2. **Retail Concentration Strategy**
3. **Property Business Improvement District**
4. **High Speed Rail EIR Review**
5. **Telecommunications RFP Implementation**
6. **Support Expansion of Healthcare Facilities**
7. **Free Freeze Program Evaluation**

The team will also continue with current activities supporting businesses during COVID-19, including a) collecting and disseminating information to employers and employees, b) continue with business outreach, c) outreach to the development community, d) providing technical and financial resources in partnership with community partners, and e) continue to identify and evaluate business resiliency strategies. In addition, specific to the COVID-19 re-opening, staff will **f) develop and distribute a handbook with protocols and strategies for re-opening by industry.**

Additionally, it is recommended the following activities be added and prioritized to support recovery of the restaurant industry, retailers, and small businesses, to encourage tourism, and to support new investment.

- A. **MONTEREY ROAD IMPROVEMENTS-** Work with the Engineering Division to explore repurposing a traffic lane and on-street parking along Monterey Road through Downtown that create more space for retailers, restaurants, pedestrians and cyclists. Explore curbside pickup and other on-street parking policies that will help with deliveries, valet parking, etc.
- B. **COMPREHENSIVE PRELIM REVIEW** - Formalize City preliminary review of conceptual commercial and industrial developments. City to schedule prelim review once a month to allow developers to schedule meetings and receive immediate feedback across departments.
- C. **CITY POLICIES** - Review City policies, including conditional use permits (CUPs) (hours of operation), Planned Developments (PDs) (clarity on development), Curbside Pickup, Telecommunication requirements for commercial and industrial developments, Placemaking and landscaping opportunities that will support the City's Place Branding, and Sign Policies that will support existing and new retail development.
- D. **EVENT PROGRAMMING, DOWNTOWN PLACEMAKING** - Explore partnerships with community organizations to develop and execute events that will meet new distancing requirements and will activate Downtown. Activities could include art fairs and other placemaking opportunities like chalk art, outdoor art galleries, murals, and temporary art projects.
- E. **BUY LOCAL CAMPAIGN** - Work with partners to execute a buy local campaign, creating awareness of local retailers and goods to encourage local spending.
- F. **POP UP RETAIL/WINDOW ACTIVATION** - Work with partners to develop opportunities to activate vacant windows and create non-brick and mortar retail opportunities, either with sidewalk activation or with temporary markets.
- G. **APPLY FOR EDA FEDERAL GRANT** - Apply to EDA for funding associated with enhancing telecommunications capacity to expand infrastructure to residential and commercial areas in Morgan Hill.

COMMUNITY ENGAGEMENT: Collaborate

Community outreach during the pandemic has been done through the City's 411 newsletter, a post card to all businesses, three newsletters, email communications, and Business Resiliency Roundtables. This report serves to inform the Council and community on potential next steps.

ALTERNATIVE ACTIONS:

The Council may choose to propose alternative COVID-19 economic recovery strategies.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2017, the City Council approved the Economic Blueprint that provides direction the priorities for the Economic Development work program.

On May 6, 2020, City Council directed staff to develop recommendations for an economic recovery plan that responds to the needs of the local business community.

FISCAL AND RESOURCE IMPACT:

The 2020-21 work program items are accounted for in the current Economic Development budget. To address the fiscal impacts to the City from COVID-19, adjustment to the Economic Development Budget was recommended at the May 15 Council Budget Workshop to remove the Economic Development Fellow as well as contractual services and supplies. Some of the previously planned marketing and promotions events (ULI conference, speaker series, wine stroll, broker breakfasts, etc.) are uncertain during COVID-19 and were likely not going to be feasible to implement, therefore were recommended to be suspended at this time.

The new activities listed for consideration in the Recovery Plan are not included in the proposed budget. If the Council chooses to move forward with the planning for the PBID, approximately \$45,000 will need to be allocated to that effort. The other activities will need to be evaluated based on existing work commitments and resources available after the approval of the proposed budget.

CEQA (California Environmental Quality Act):

Not a Project – the Economic Development work plan is an administrative activity of government that will not result in direct or indirect physical changes in the environment. While some projects on the work plan may result in changes to the physical environment, those projects will undergo appropriate environmental review on a project by project basis to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. Business Resiliency Roundtables Findings Summary
2. CMH Covid19 Economic Recovery Strategies

ATTACHMENT 1

Business Resiliency Roundtables Findings Summary**Retail Roundtable:**

- Developing a retail resiliency plan is crucial to moving forward. Plan should include giving customer choices and providing more e-commerce options
- Fed Ex recommendations for growing your businesses online presence
 - Visibility: how to attract visitors to your company
 - Utilize Search Engine Optimization (SEO) such as www.highervisability.com
 - Key word linking
 - Social Media
 - Monitor your data analytics
 - Use of Meta & Heta tags
 - Demand Generation: Assist with SEO's
 - Example would be [HubSpot](#), [Marketing 360](#), etc.
 - Understand your SE ranking
 - Access: How to get products to your customer safely
 - Provide alternatives, Fed Ex has secure locations spots for pick-up such as Walgreens or at their retail stores
 - Reverse logistics
 - 79% of customers return if returns are free
 - Transportation: Options a merchant chooses to deliver products to its customer
 - Fed Ex uses: Express, Ground, Customer etc. options
 - Inventory Management: Process of ordering, purchasing, storing,
 - Popular Inventor Management Applications: [Fishbowl](#), [Lightspeed](#), and [Stitch Labs](#)
 - E-Commerce Platforms: Online Store Applications:
 - Example of E-Commerce applications; [Magento](#), [WIX](#), [Big Commerce](#), [Shopify](#)
 - Payment: Important to complete a transaction
 - [Apple Pay](#), [Google Pay](#) [PayPal](#)
 - Marketplace: Online Site where people can buy variety of sellers
 - [Amazon](#), [Walmart](#), [eBay](#), etc.
 - Commerce Management: Managing the online product branding, customer experience, social media
 - Trade Facilitation: Complying with laws
 - Fed Ex can help with this
- Mainstream Boutique
 - Include Facebook Live videos of your store promotions and merchandise
 - Include private consulting meetings with your client
 - Have special events such as "Meet your Vendors"

ATTACHMENT 1

- Provide Curbside Pick-Up option for your customers
- Provide PPE to your customers
- Talk to your landlord and have them consider tagging rent to the end of your lease
- Consider home delivery options
- Work with your local and state government to delay minimum wage increases
- Businesses will need to:
 - Continue to adhere to social distancing rules
 - Think ahead of how people naturally move in their stores
 - PPE: will need to be provided to employees and available to customers
 - Use plexiglass at cashiers and points of customer contact
- Consider partnerships with other business. Example Rocca Market & Tinker Toys partnership
- Consider partnerships between business and property associations

Tourism Roundtable:

- Wineries are having virtual tastings, providing winemaker interviews
- Partnerships between wine and stores. Good example is Kirgin and Lawson Bakery
- VMH has created a business resource link on their site
- Advocacy in Sacramento should be considered to help businesses open safe & quickly
- Parklets should be considered so restaurants could expand their footage
- Road Diet should be considered
- Consider having smaller gatherings
- Events such as the Wine Stroll should have the event, but stagger the times to allow less people
- Consider venues such as the Sports Center for events and wine tastings, and other restaurant events, etc.
- Have restaurants work with local wineries (this has been in the works)
- VMH's role should be prepared to have messaging and plan for when the economy opens up again
- Consider having a bike party Downtown
- Consider using Villa Miramonte Park as a venue (is considered part of Morgan Hill Historic Society)

Manufacturing Roundtable:

- [SFMade](#) & [Manex](#):
 - SFMade is gathering best practices from larger manufacturers and is in the process of developing a best practice book
 - More training will be needed in forecasting for manufacturers
 - Challenge in supply chains will need to be addressed

ATTACHMENT 1

- Many Manufacturers are shifting their services during COVID-19. For example, textile companies are making masks, some are making face shields and alcohol distilleries are making hand sanitizers, food industry are shifting to consumer package goods
- Manufacturers will face both issues in the scaling back of their operations and the scaling up
- Workforce training will be required around maintaining the new social distancing norms
- [National Association of Manufacturers](#) published new guidelines
- MEP- [Impact Washington](#) is a good resource for guidelines
- Leadership and Communication training will be needed at all levels
- **Paramit**
 - Demand for personal dialysis machines are up
 - Hiring tech assemblers
 - Implemented daily employee health checks, hand sanitizers everywhere, office employees are working from home
 - Making their own masks
- **Sun Basket**
 - Buying masks for their own employees
 - Developed a communication piece early to help employees define what is considered “direct contact”
 - No truck drivers, visitors are allowed on premise unless it is an emergency
 - Working with Second Harvest Food
 - Working with “Feed it Forward” to donate meals to hospitals in NY and NJ metro areas
 - Installed a camera system called Fortric that provided thermal imaging fast to track employee temperatures

Communication Resources Round Table:

- **Messaging**
 - Imaging matters remember to portray a “safe” image that has a social distancing visual
 - Medium matters
 - Use [Google Analytics](#)
- **Top suggestions for COVID-19 Strategy**
 - Website- Make your customers aware that you’ve update your website to include new COVID-19 protocol
 - Create a resource page
 - Re-imagine how you sell – consider online
 - Email list- brief message out to your customers on what your promoting/selling
 - Describe how your company is taking safety precautions
 - Chose joy & promote positivity
- **Social Media Channels**
 - Do not post photos with a lot of people
 - Important to develop a brand

ATTACHMENT 1

- Consistency is key
- Business Development
 - Evaluate your brand position
 - Update your website
 - Invest in training and updating workforce
- [Facebook](#) is best social media platform to use. User base is higher
- Know your audience. [Instagram](#) is better for younger audiences
- Good to use [Google Analytics](#)
- [Wix.com](#) and [SquareSpace](#) are easy to use to create website platforms
- [Google Trends](#) is a good way to check what is trending on the internet
- Branding: How do you distinguish your company
 - Walmart vs. Target are good examples of different branding
- How to increase your followers
 - Follow others that follow you
 - Comment and respond to likes and questions
 - Double tap on Instagram

Business Assistance

- Non-profits can apply to both [Paycheck Protection Program](#) (PPP) and [Economic Injury Disaster Loan \(EIDL\) and Advance Loans](#)
- [Morgan Hill Grow Funds](#) requires a business owner to be a citizen or a permanent resident
- There are alternative vendors that accept I-10's, call Dennis King at SBDC
- Hairstylist can apply as sole proprietors to EIDL loans
- Main Street Program is for larger companies with 500 or more employees. This program is in the works.
- Make sure that you connect with your bank if you are applying to EIDL loans or any loan. The unsurmountable increase of traffic has caused glitches in the system.
- LLC businesses can apply for the EIDL Advance Loan

IDEAS FOR MORGAN HILL COVID-19 ECONOMIC RECOVERY STRATEGIES

		FUNDING	RESTAURANTS	DOWNTOWN	RETAIL	SMALL BUSINESS	TOURISM	MANUFACTURING	HEALTHCARE	TELCO
Business Outreach										
1	Parklets	\$	X	X	X	X	X			
2	Monterey Road Improvements (Road Diet)	\$	X	X	X	X	X			
3	Alcohol To-Go*		X	X		X	X			
4	Review Curbside Pickup & Drive-Thru Policies		X	X	X	X	X	X		
5	Temporary Art Installations	\$	X	X	X	X	X			
6	Window Activation	\$	X	X	X	X	X			
7	Pop Up Retail Opportunities		X	X	X	X	X			
8	Event Programming/Activation	\$	X	X	X	X	X			
9	Home Delivery of All Goods*		X	X	X	X		X		
10	Small Business Support Through MHCC		X		X	X		X		
11	Small Business and Downtown Support Through MHDA		X	X	X	X	X			
12	Buy Local Campaign	\$	X	X	X	X	X			
13	Co-Promote		X	X	X	X	X	X	X	
14	Bundle Media Buys	\$	X	X	X	X	X	X	X	
15	Maximize Use of Channel 17		X	X	X	X	X	X	X	
16	Partner Non-Profits with Businesses		X	X	X	X	X	X	X	
17	Promote Regional Hire Program		X	X	X	X	X	X	X	
Development Outreach										
18	Explore Private Development Placemaking Opportunities			X			X			
19	Outreach to Existing Developers			X	X			X	X	
20	Review Landscaping Policies for Placebranding			X			X			
Technical and Financial Resources										
21	Develop Economic Recovery Task Force		X	X	X	X	X	X		
22	Develop Re-Opening Guidance Handbook		X	X	X	X	X	X	X	
23	Identify Business Support Programs (Finance Agreements)		X		X			X	X	
23	Explore Small Business Loans/Grants	\$	X	X	X	X	X			
24	Review City Policies (CUPs, PDs, Sign Ordinance, Sidewalk Cafes)		X	X	X	X	X			
25	Evaluate Impact Fee Freeze Program		X		X	X		X	X	
26	Enhanced Technical Support Through SBDC	\$	X	X	X	X	X	X		
27	Promote Clear Business Policies		X	X	X	X	X	X	X	
28	Comprehensive Preliminary City Review		X	X	X	X	X	X	X	X
29	Review Voluntary Fee to Enhance Wi-Fi		X	X	X	X	X	X	X	X
30	Use City's Telco Contract to Expand Services to Community	\$	X	X	X	X	X	X	X	X
31	Require New Development to invest in Telco Infrastructure		X	X	X	X	X	X	X	X
Miscellaneous										
32	Reinforce Economic Blueprint Goals		X	X	X	X	X	X	X	X
33	Re-Evaluate Economic Blueprint	\$	X	X	X	X	X	X	X	X
34	Support Lodging and Tourism Industry Through VMH & SCWA		X	X	X	X	X			
35	Complete VMH Strategic Plan		X	X	X	X	X			
36	Enhance VMH Branding Campaign	\$	X	X	X	X	X			
37	Develop a City Place Branding/Placemaking Program	\$	X	X	X	X	X	X	X	

*Legislative Advocacy - Not City's Control

Item # 06

AGENDA DATE: 05/20/2020

SUPPLEMENT # 1

From: [Monica Delgado](#)
To: [D. Muirhead](#)
Cc: [Christina Turner](#); [Michelle Bigelow](#); [Angie Gonzalez](#); [Chris Ghione](#); [Dat Nguyen](#); [Harjot Sangha](#)
Subject: Response to Comment on reductions from packet
Date: Wednesday, May 20, 2020 11:44:33 AM

Good afternoon Mr. Muirhead, please see our response in red below.

Don't understand how departments can reduce supplies and services (what was unneeded?)

Council Services and Records Management: **Reductions in other supplies and conferences/trainings. This was for the purchase of supplies for Proclamations, Resolutions, etc.**

City Manager: **Reductions in contract services, other supplies, and advertising. An example of this is leadership development services and supplies.**

City Attorney: **Reduction in contract services specifically for outside counsel.**

Economic Development: **Eliminated the Part-Time Temporary Fellow position and reduced contract services and conferences/meetings.**

Details only given for Development Services

Building: Reductions (contract services)

Planning: Reductions (training and education)

Land Development and Engineering: Reductions (contract services) I have requested in past years that you tell us about the training being received but you chose not to.

Appropriate training allows one to "work smarter" and in my case was also enjoyable; you should allow selected training

The City recently put in place restriction on travel and training, limiting to local, online, and regulatory required training, as one of the cost reduction strategies

Don't understand what reorganization means in structure and/or services

Land Development Engineering

This reorganization will integrate the CIP and LD processes and allow for the new Division to shift resources to support changing levels of need between Land Development and Capital Projects. The reorganization would propose the transfer of one Associate Engineer to the Utilities Division to support Planning and Engineering work on the front-end CIP.

Recreation and Community Services

Background:

For the Recreation Division, the Covid-19 crisis has shuttered our recreation facilities and turned the cost-recovery model upside down. The CRC/AC Membership has been reduced significantly and it is unknown if any revenue for recreation will be generated for the entire summer. Not knowing when or under what provisions our facilities will be able to reopen; creating a scenario where one of the most reliable revenue sources the City has had for the last decade has completely disappeared. It is unknown if in the "new normal" (post-Covid-19) attendance and use of the recreation facilities will ever return to the levels they were previously at; and even if they do, the costs of doing business to operate these facilities are likely to increase in the areas of cleaning and supervision.

New Baseline:

The only prudent fiscal option for moving forward is establishing a new baseline for services and management of the services. The City's partners at the YMCA have been supportive of this strategy and are using a very similar approach in working with the YMCA of Silicon Valley as a whole. The new

baseline will involve bringing back services at the facilities under new protocols as they allow and at levels to serve those residents that are willing to participate in programming. The development of a new structure will involve the contraction of management staff and the reduction of programming staff to match the new baseline levels of service.

Development Services

This reorganization proposes to move an Associate Planner and Senior Planner to Long Range Planning to work on state mandated updates to our Housing Element, Safety/Hazard Element, Traffic and Circulation Element, and the newly required Environmental Justice Element. This will allow for a reduction in contract services in Long Range Planning.

CAL FIRE Contract - Personnel estimated savings Is this due to Governor's request that all state employees take 10% pay cut?

This is a result of current vacancies and the way the State budgets personnel, every position is budgeted at top step.

Governor is requesting that all state employees take 10% pay cut.

City is only looking at COLA elimination City Manager, City Attorney, Management, Professional, and Confidential.

That is correct, for now, as the City continues to monitor and evaluate the financial impact.

Given concerns about mental health impacts of Covid do not eliminate Police Parent Project Training Program (\$3K)

Noted

Doug Muirhead, Morgan Hill

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Item # 05

AGENDA DATE: 05/20/2020
SUPPLEMENT # 2

From: [Skip Houston](#)
To: [CC Public Comment](#)
Subject: Budget
Date: Wednesday, May 20, 2020 8:55:56 AM

Hello;

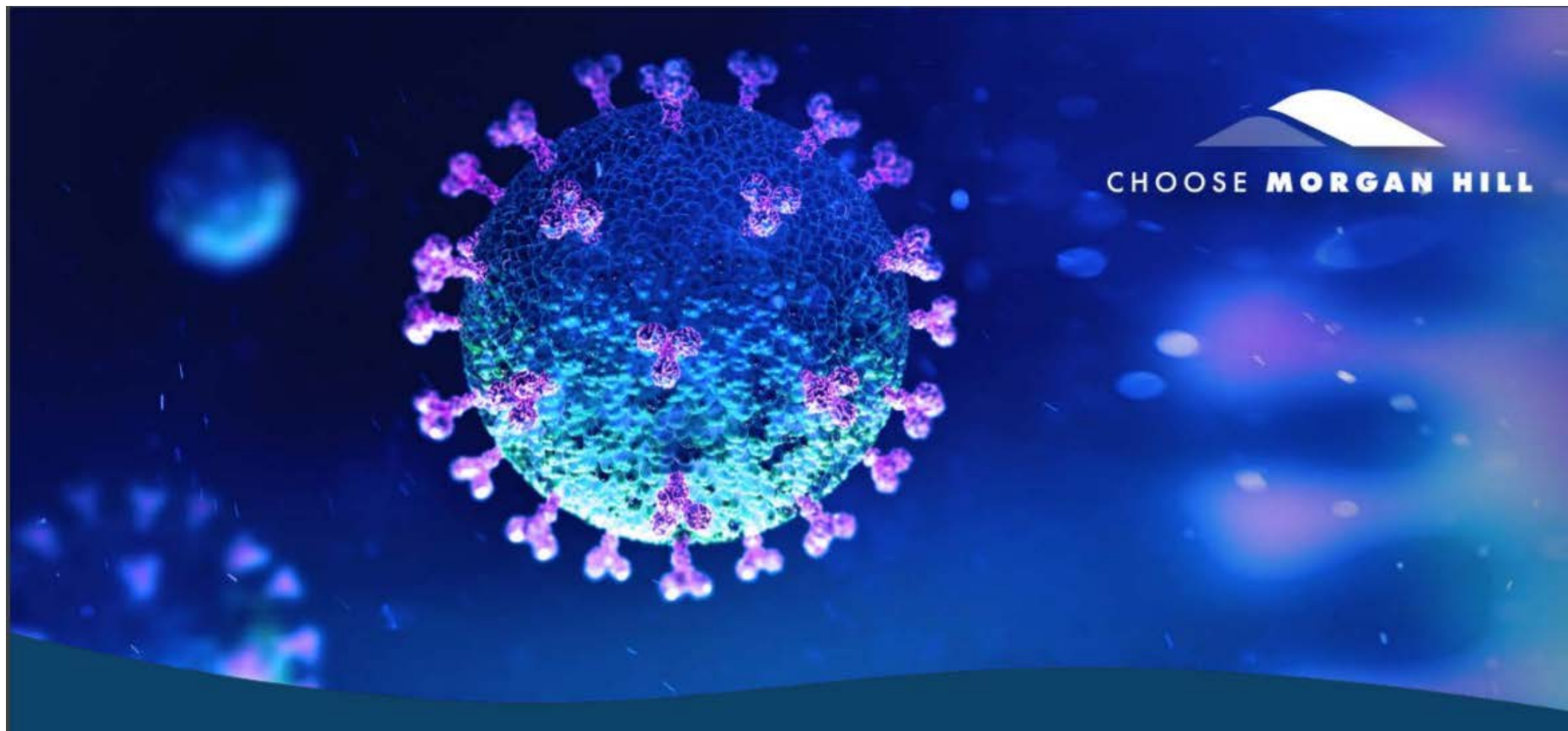
I think everyone understands the economic hardship the city is facing amidst this Pandemic...we are all dealing with it on an individual basis as well.

I can only plead that the City doesn't make some foolish, short-term, decisions that will actually doom the City in the long run. The main concern is the Trammel-Crow project. Yes, it would bring in needed revenue via taxes and possibly bring in some jobs (although i feel the majority of the low paying jobs would come from counties south of Morgan Hill). You can already see the destruction of the beauty of our small town with the the cement jungle that is going to be the Shoe Palace. The Trammel-Crow project would be immediately across from the ugly cement barriers of the Shoe Palace. Do we really want to become the next Oakland or Stockton...with the cold look of cement tilt ups and hundreds of 18 wheel, diesel trucks populating our streets on a daily basis?

Please find another way....and don't sell your soul!

Skip Houston

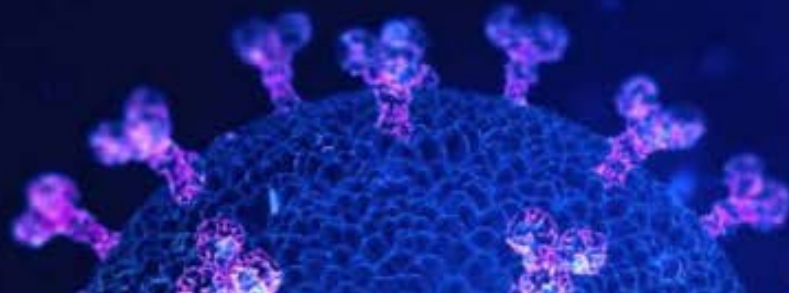
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Economic Development Business Recovery
May 20, 2020
City Council Meeting
Item #6

ROLE OF ECONOMIC DEVELOPMENT DURING AN ECONOMIC CRISIS?

How do we best serve our community?



CHOOSE MORGAN HILL

City Efforts Supporting Local Economy- INFORMATION

Posting information, resources and tools on City's web site, Social Media, traditional mailings and newsletters



COVID-19 UPDATE FOR MORGAN HILL BUSINESSES

For more information visit: morganhill.ca.gov/covid194biz

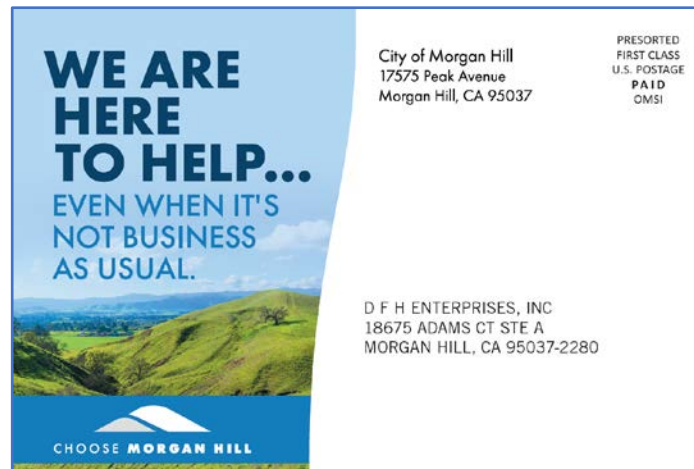
The City of Morgan Hill is grateful for what you are doing to keep us safe and keep our economy going. While many businesses are temporarily closed, other businesses are hiring. Click [here](#) or scroll down for a list of some companies that are hiring in Morgan Hill.

Although we may be able to go back to work at the end of May, there will be a new normal. We all need to rethink our business models to adapt to a changing environment. While the City may not have a lot of financial resources, we are thinking about ways we can support the economic recovery. Please email us your ideas: edith.ramirez@morganhill.ca.gov

DO YOU HAVE AN IDEA FOR ECONOMIC RECOVERY?

WE WANT TO HEAR IT!

We have learned from our [Business Resiliency Roundtables](#) that we need to expand business hours to help companies run more shifts and meet social distancing requirements. We also know that the way we communicate is more important than ever. For recordings, power points of the webinars, go to www.choosemorganhill.com/covid19roundtables



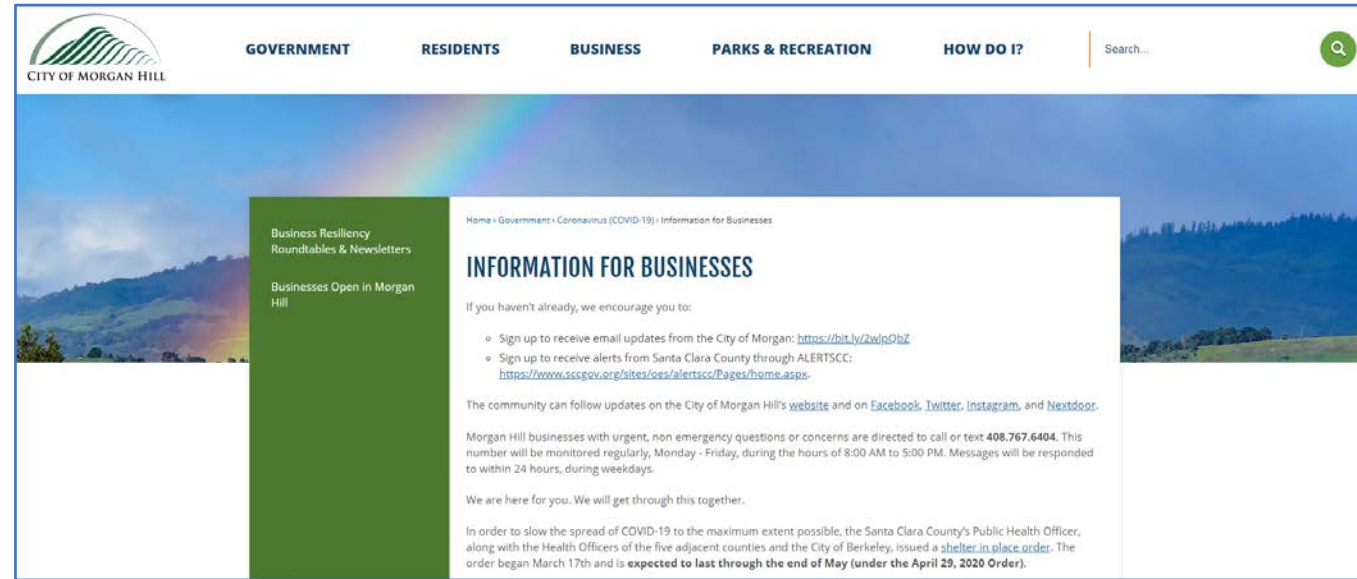
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City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

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D F H ENTERPRISES, INC
18675 ADAMS CT STE A
MORGAN HILL, CA 95037-2280

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CITY OF MORGAN HILL

GOVERNMENT RESIDENTS BUSINESS PARKS & RECREATION HOW DO I? Search...

Home > Government > Coronavirus (COVID-19) > Information for Businesses

INFORMATION FOR BUSINESSES

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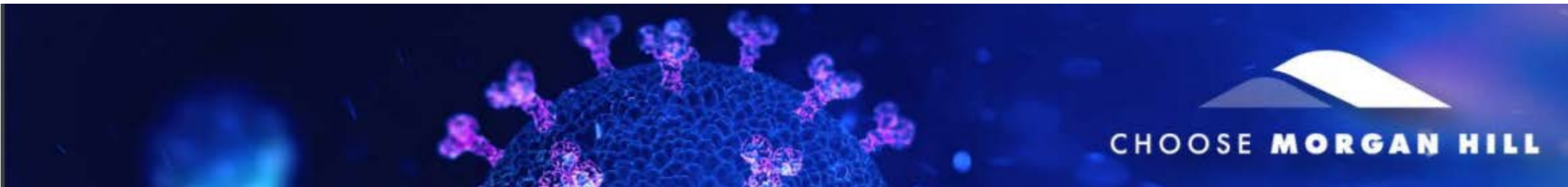
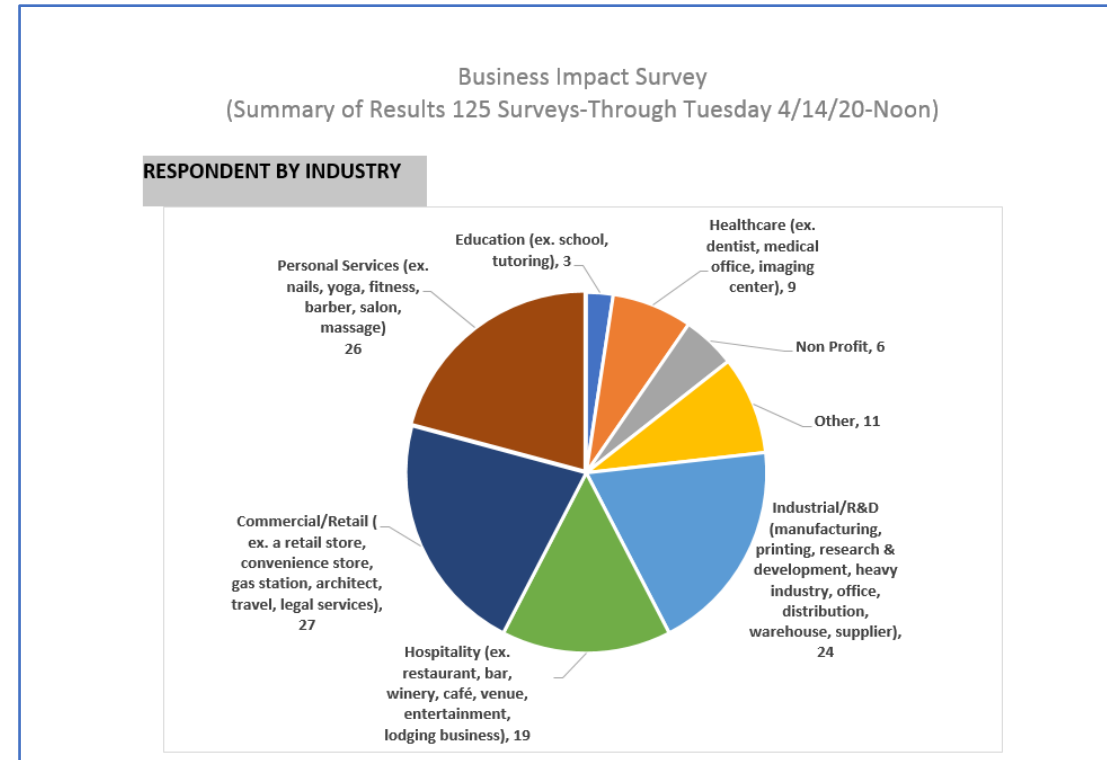
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City Efforts Supporting Local Economy- TECHNICAL ASSISTANCE/ROUNDTABLES

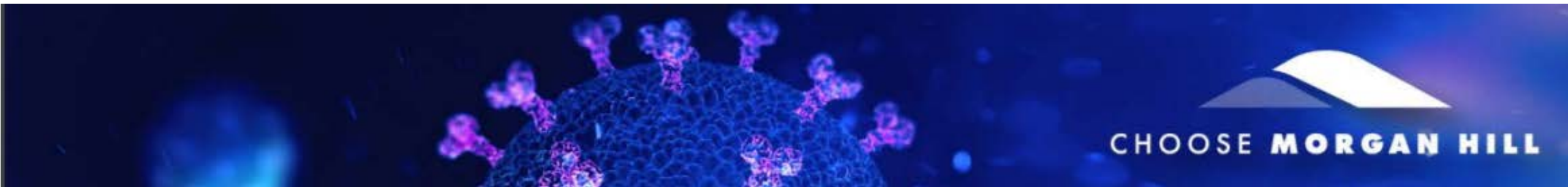
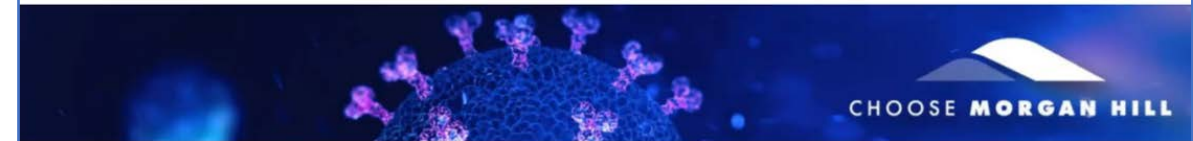
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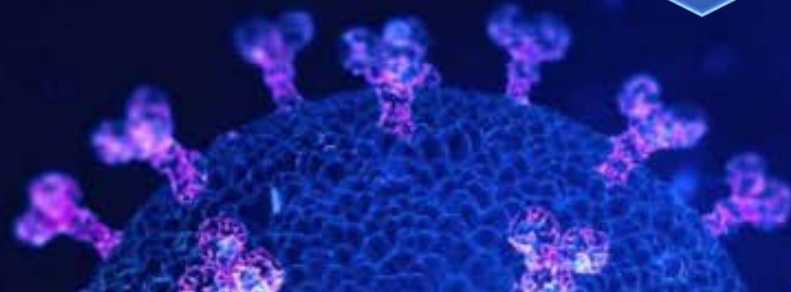
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Provide direction on FY 2020-2021 Economic Development work program



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GENERAL PLAN

General Plan 2035--Economic Development Element.

The Economic Development Element establishes policy guidance to support the community's economic well-being. Its strategies include diversifying the local economy, increasing the quality and quantity of available job opportunities, decreasing the need for commuting, creating a thriving Downtown, and enhancing Morgan Hill's appeal as a tourist destination.

Develop & maintain high-quality public infrastructure & services

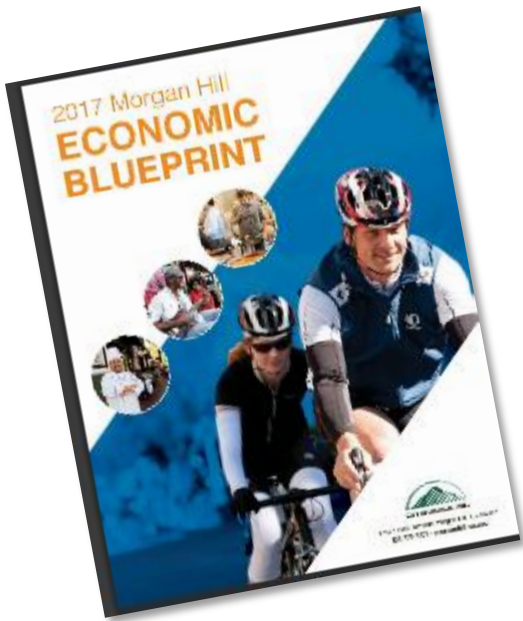
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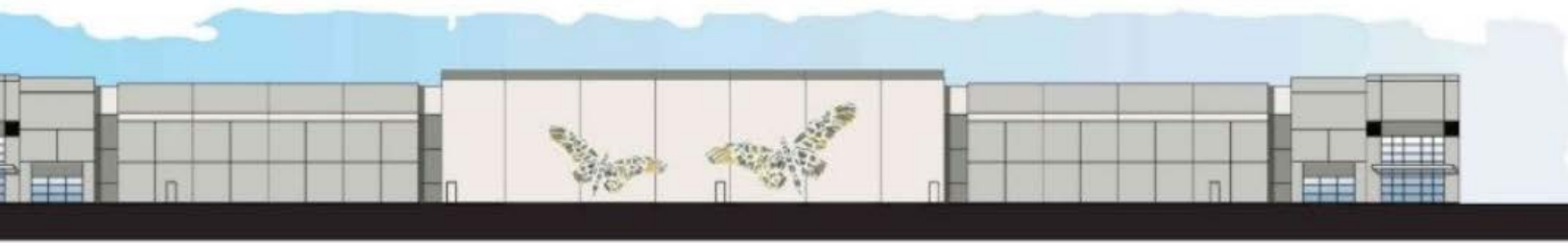




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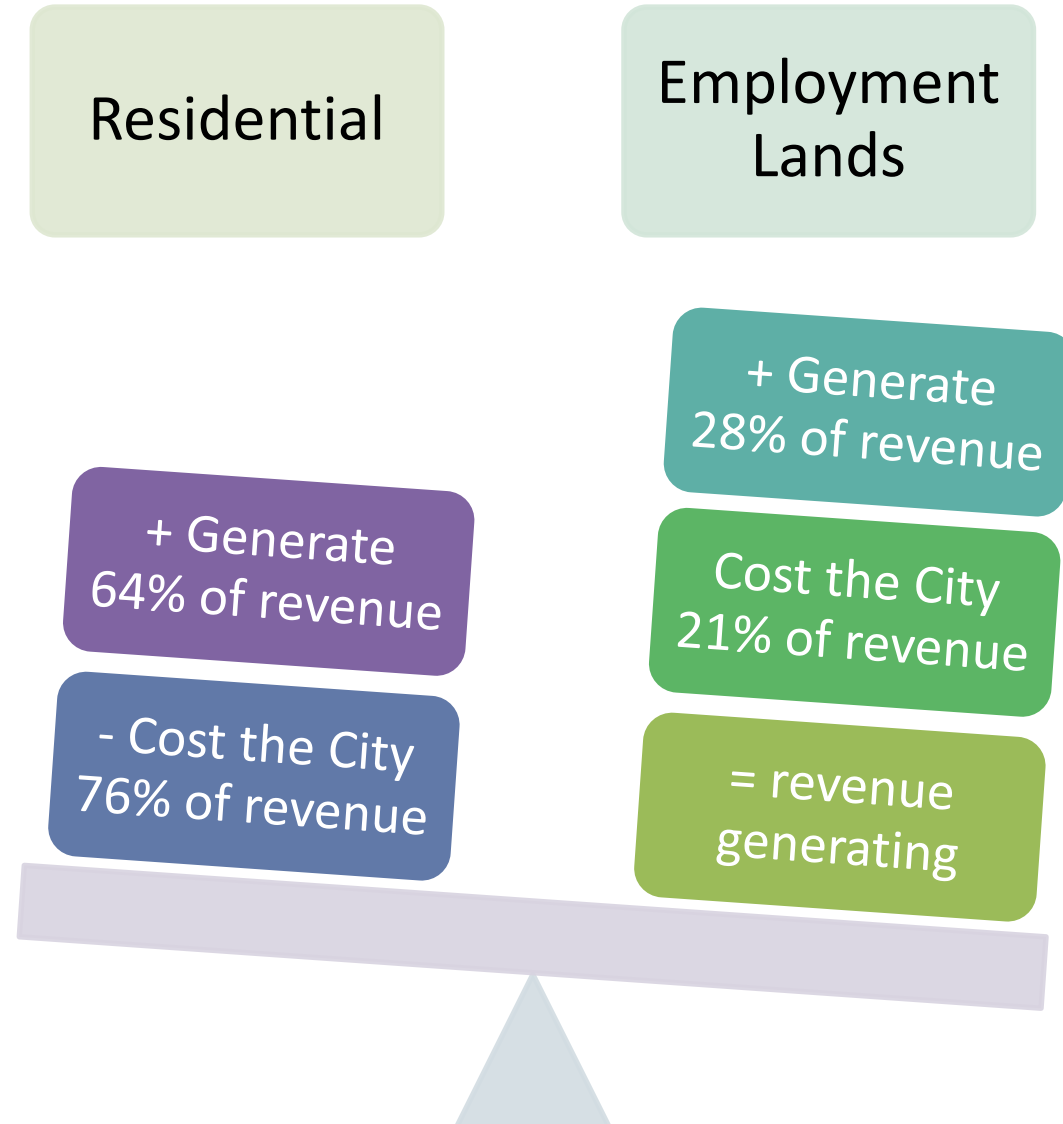


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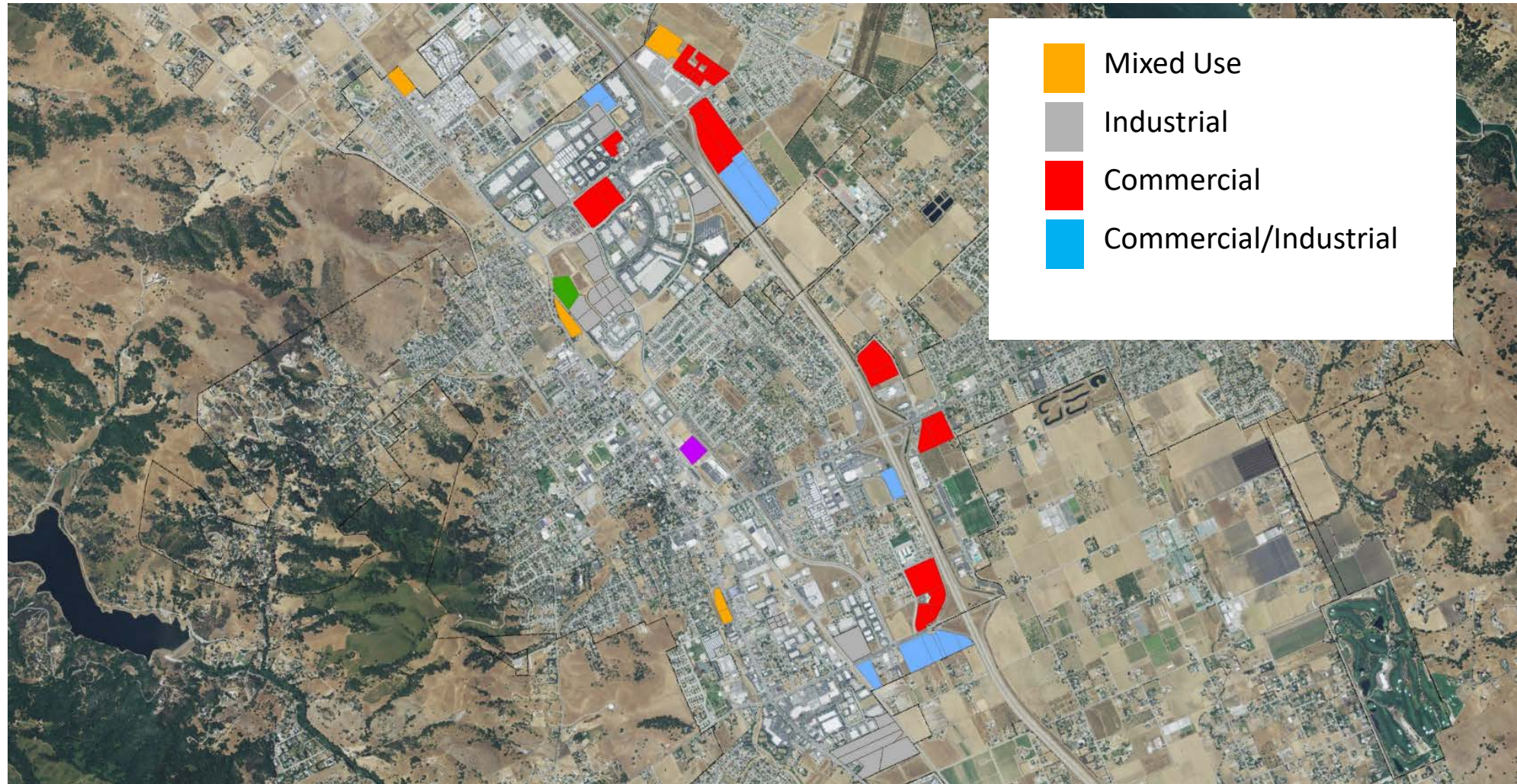


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Commercial & Industrial development generate revenue for the City to pay for services.



VACANT LAND 5+ ACRES



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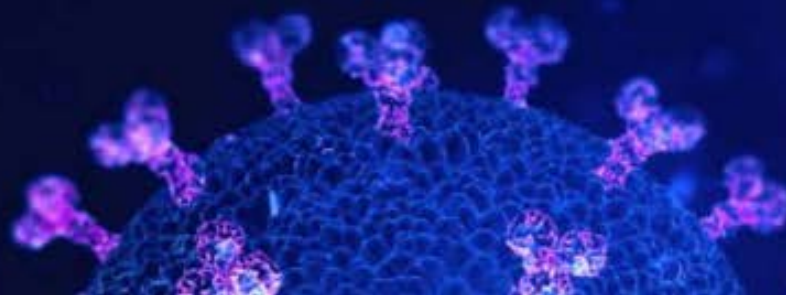


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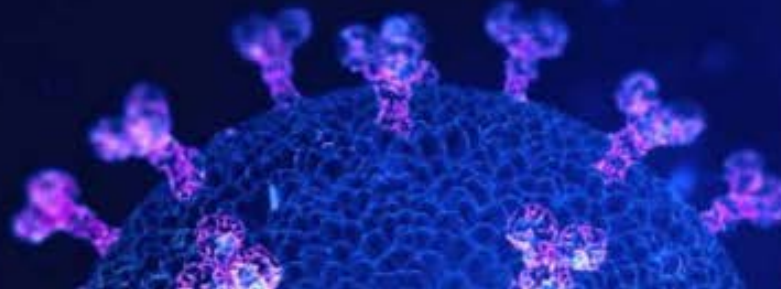


CHOOSE MORGAN HILL

Local Approaches and Strategies for RECOVERY

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Business Outreach											
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2	Monterey Road Improvements (Road Diet)	\$		X	X	X	X	X			
3	Alcohol To-Go*			X	X		X	X			
4	Review Curbside Pickup & Drive-Thru Policies			X	X	X	X	X	X		
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9	Home Delivery of All Goods*				X	X	X		X		
10	Small Business Support Through MHCC			X		X	X		X		
11	Small Business and Downtown Support Through MHDA			X	X	X	X	X			
12	Buy Local Campaign	\$		X	X	X	X	X			
13	Co-Promote			X	X	X	X	X	X	X	
14	Bundle Media Buys	\$		X	X	X	X	X	X	X	
15	Maximize Use of Channel 17			X	X	X	X	X	X	X	
16	Partner Non-Profits with Businesses			X	X	X	X	X	X	X	
17	Promote Regional Hire Program			X	X	X	X	X	X	X	



CHOOSE MORGAN HILL

Economic Workplan Augmentations to Support RECOVERY

Monterey Road Complete Street Improvement/Lane Reduction Work with the Engineering Division to explore repurposing a traffic lane and on-street parking along Monterey Road through Downtown that creates more space for retailers, restaurants, pedestrians and cyclists. Explore curbside pickup and other on-street parking policies that will help with deliveries, valet parking, etc.	POP-UP RETAIL / WINDOW ACTIVATION Work with partners to develop opportunities to activate vacant windows and create non-brick and mortar retail opportunities, either with sidewalk activation or with temporary markets.	EVENT PROGRAMMING & DOWNTOWN PLACEMAKING Explore partnerships with community organizations to develop and execute events that will meet new distancing requirements and will activate Downtown. Activities could include art fairs and other placemaking opportunities like chalk art, outdoor art galleries, murals, and temporary art projects.
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BUY LOCAL CAMPAIGN Work with partners to execute a buy local campaign, creating awareness of local retailers and goods to encourage local spending.	COMPREHENSIVE PRELIMINARY REVIEW Formalize City preliminary review of conceptual commercial and industrial developments. City to schedule prelim review once a month to allow developers to schedule meetings and receive immediate feedback across departments.	APPLY FOR EDA FEDERAL GRANT Apply to EDA for funding associated with enhancing telecommunications capacity to expand infrastructure to residential and commercial areas in Morgan Hill.

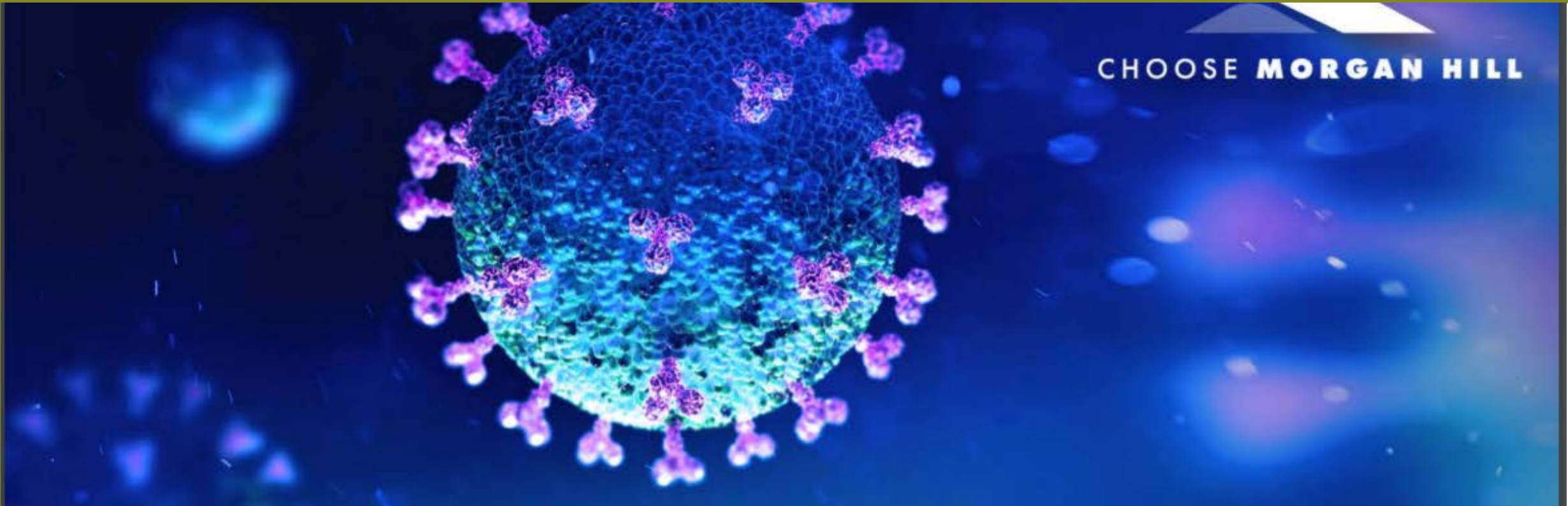
Existing Work Program, including PBID

+

1. Monterey Road/Complete Street Improvements Lane Reduction
2. Pop-up Retail/Window Activation
3. Event Programming & Placemaking
4. Buy Local Campaign
5. City Policies Review
6. Comprehensive Preliminary Review
7. EDA Grant

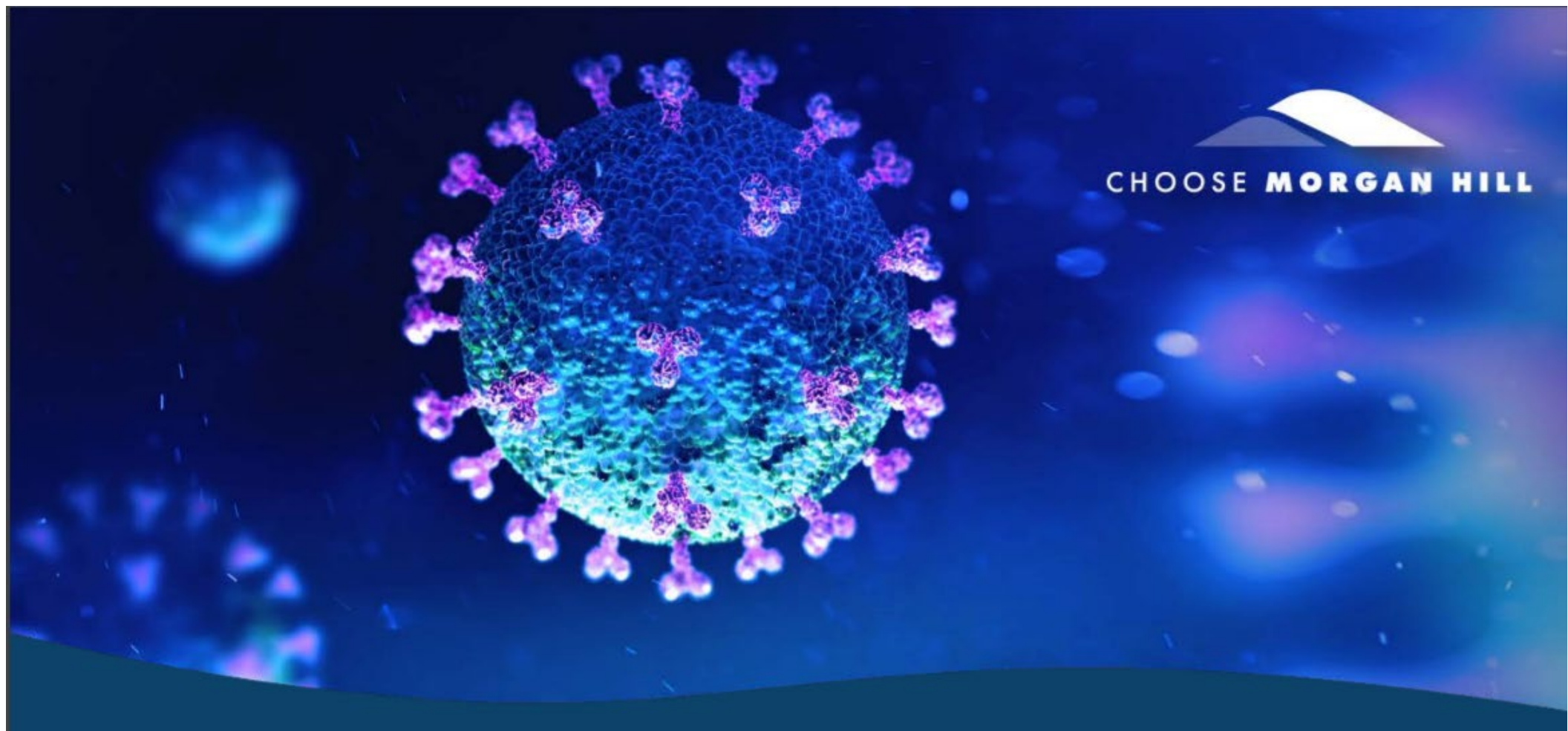
- Step out of our box & comfort zone
- Be mindful of idealistic vs realistic efforts
- Remove all the hurdles within our control
- Be fast, nimble, risk taking and creative.
- Be aware of what drives the primary funding of our City





CHOOSE **MORGAN HILL**

Questions?



Economic Development Business Recovery
May 20, 2020
City Council Meeting
Item #6

ROLE OF ECONOMIC DEVELOPMENT DURING AN ECONOMIC CRISIS?

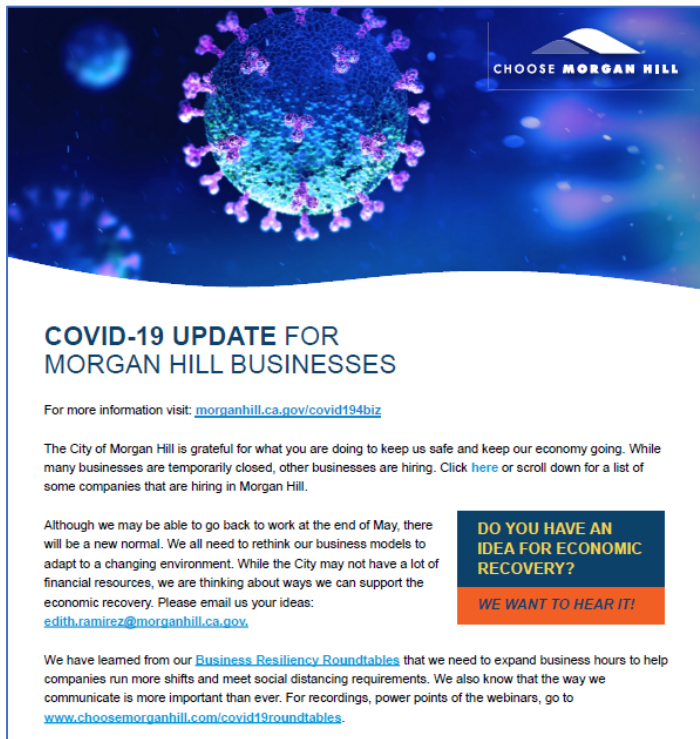
How do we best serve our community?



CHOOSE MORGAN HILL

City Efforts Supporting Local Economy- INFORMATION

Posting information, resources and tools on City's web site, Social Media, traditional mailings and newsletters



COVID-19 UPDATE FOR MORGAN HILL BUSINESSES

For more information visit: morganhill.ca.gov/covid194biz

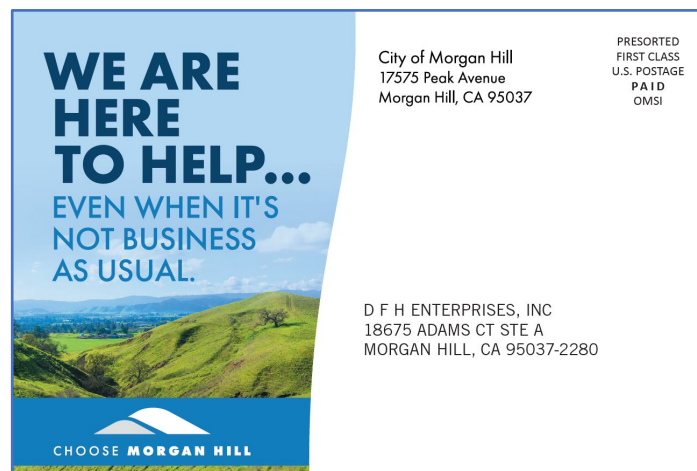
The City of Morgan Hill is grateful for what you are doing to keep us safe and keep our economy going. While many businesses are temporarily closed, other businesses are hiring. Click [here](#) or scroll down for a list of some companies that are hiring in Morgan Hill.

Although we may be able to go back to work at the end of May, there will be a new normal. We all need to rethink our business models to adapt to a changing environment. While the City may not have a lot of financial resources, we are thinking about ways we can support the economic recovery. Please email us your ideas: edith.ramirez@morganhill.ca.gov.

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DO YOU HAVE AN IDEA FOR ECONOMIC RECOVERY?

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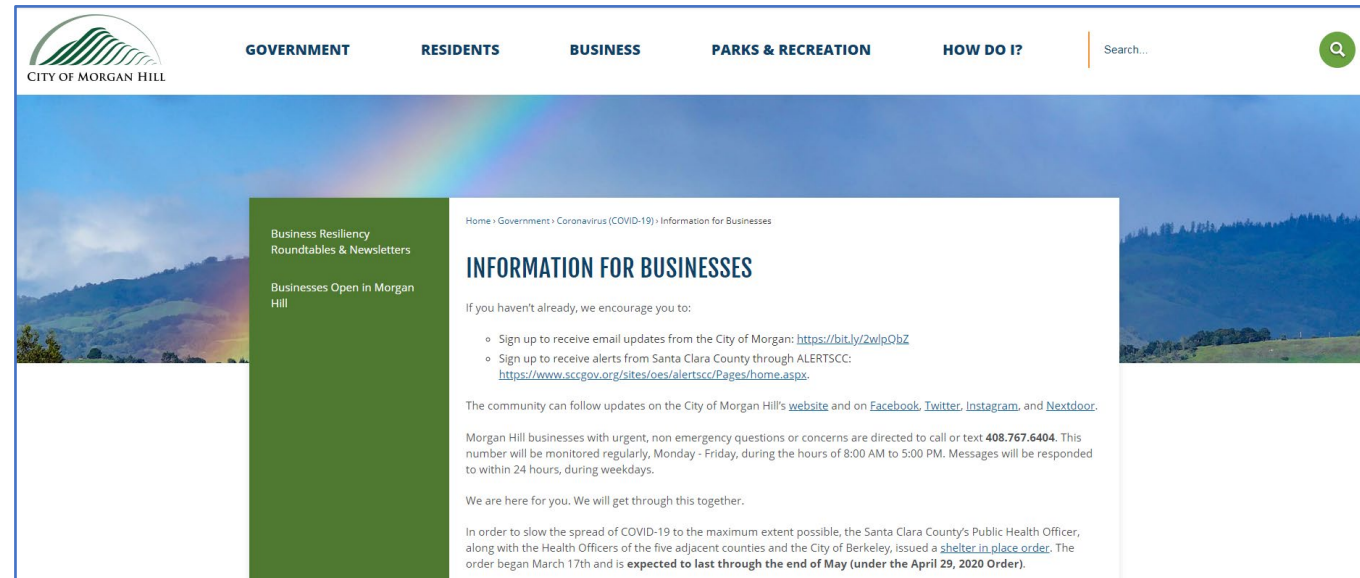
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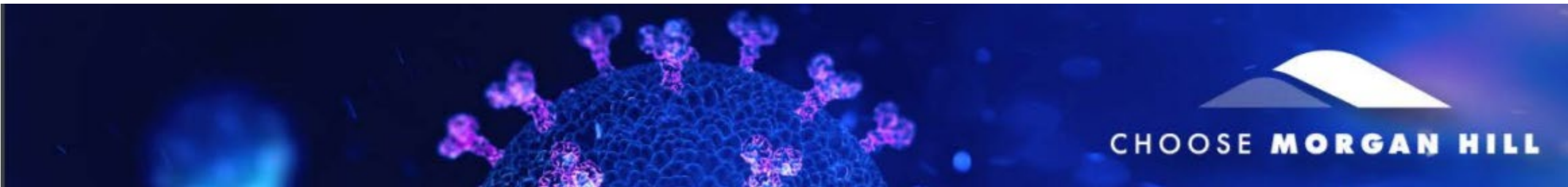
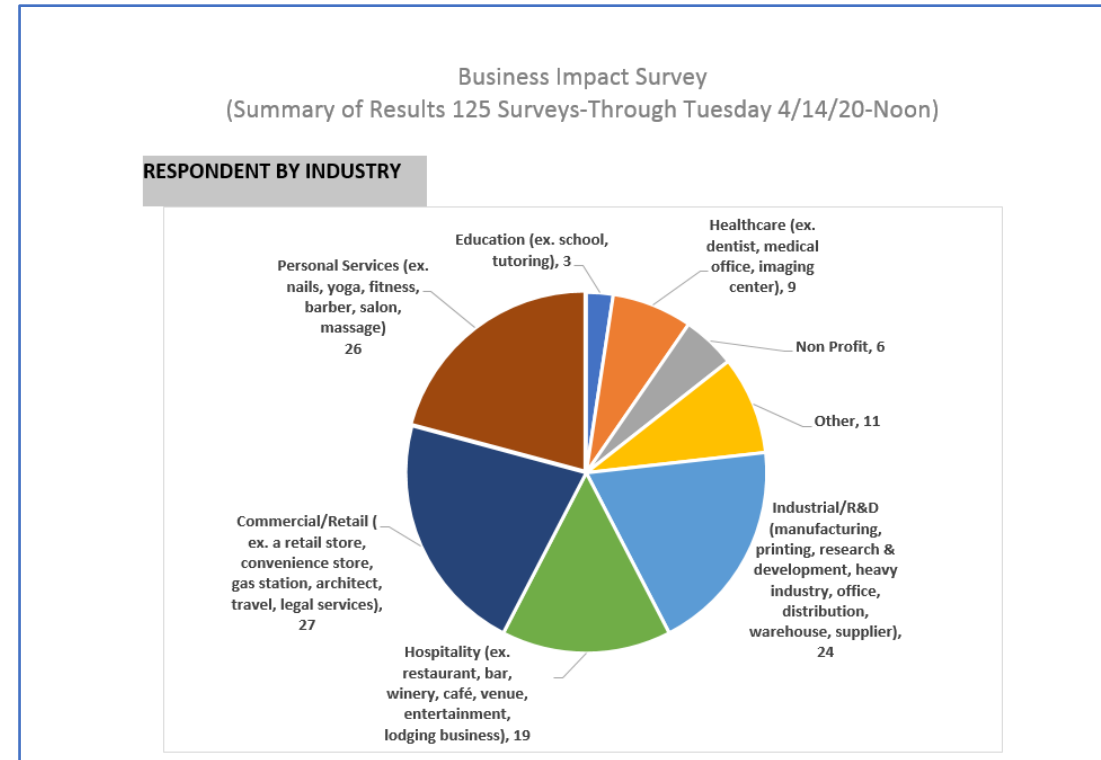
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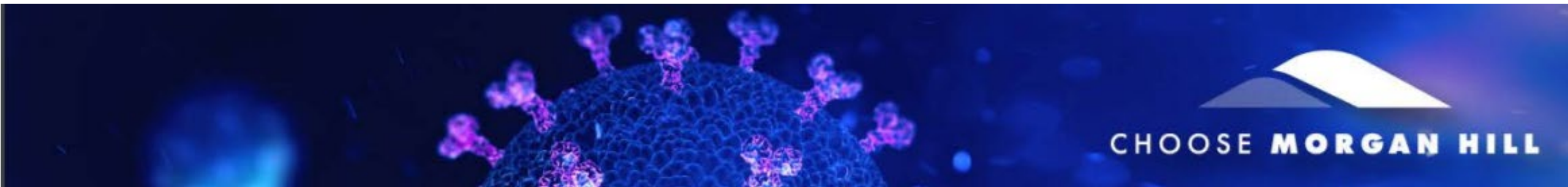
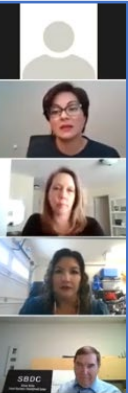
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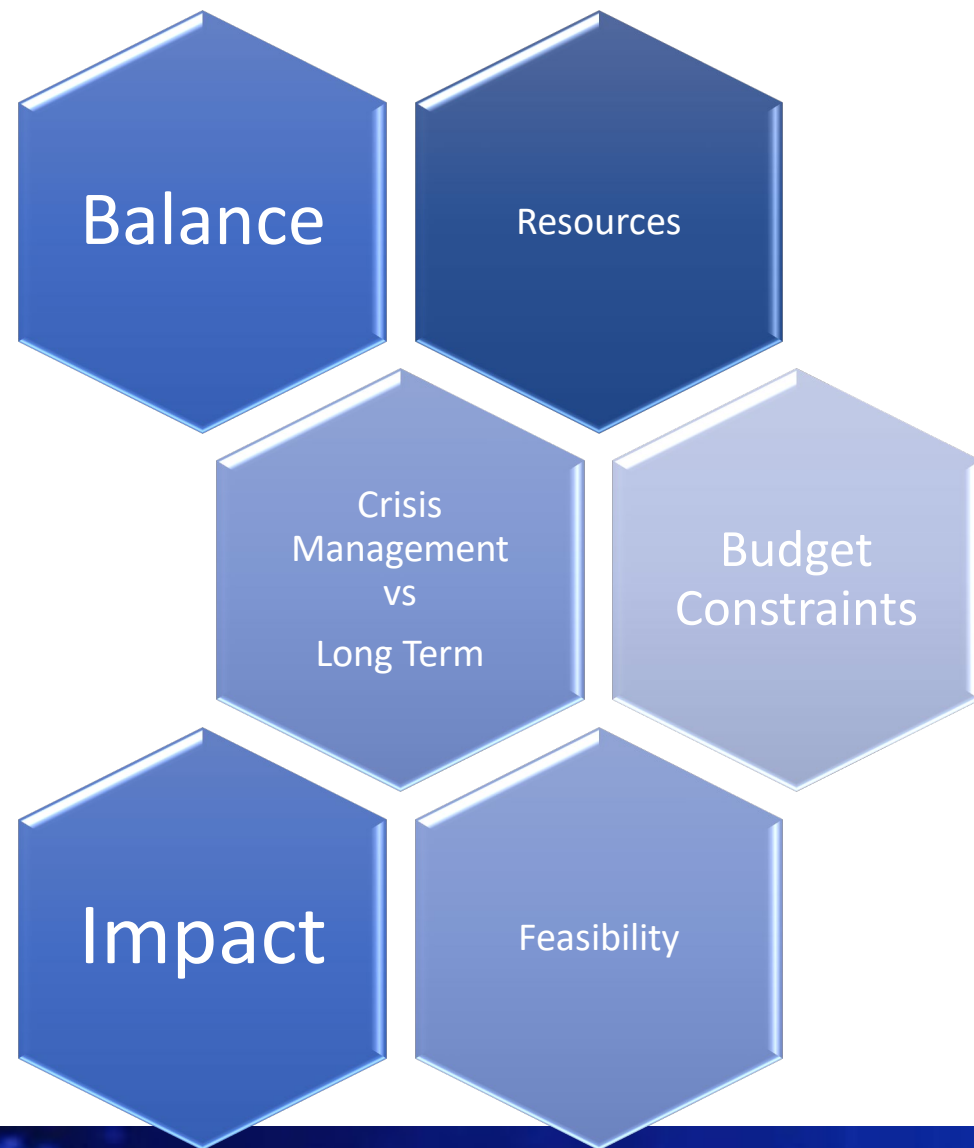
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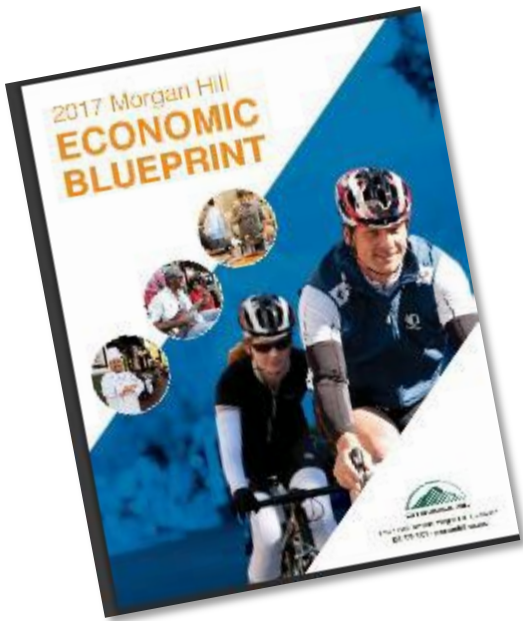
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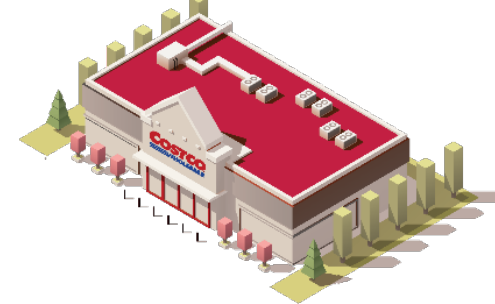
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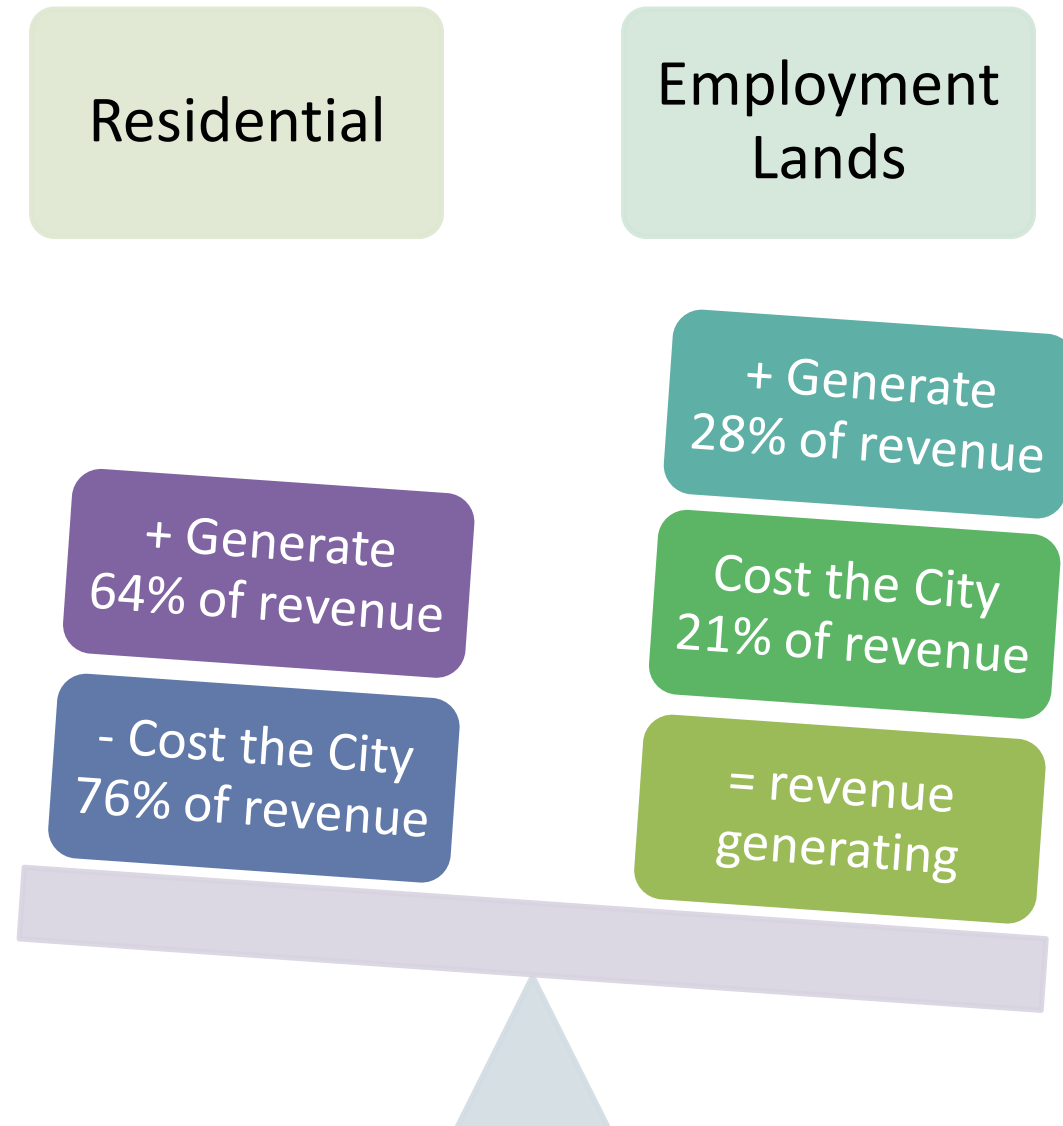


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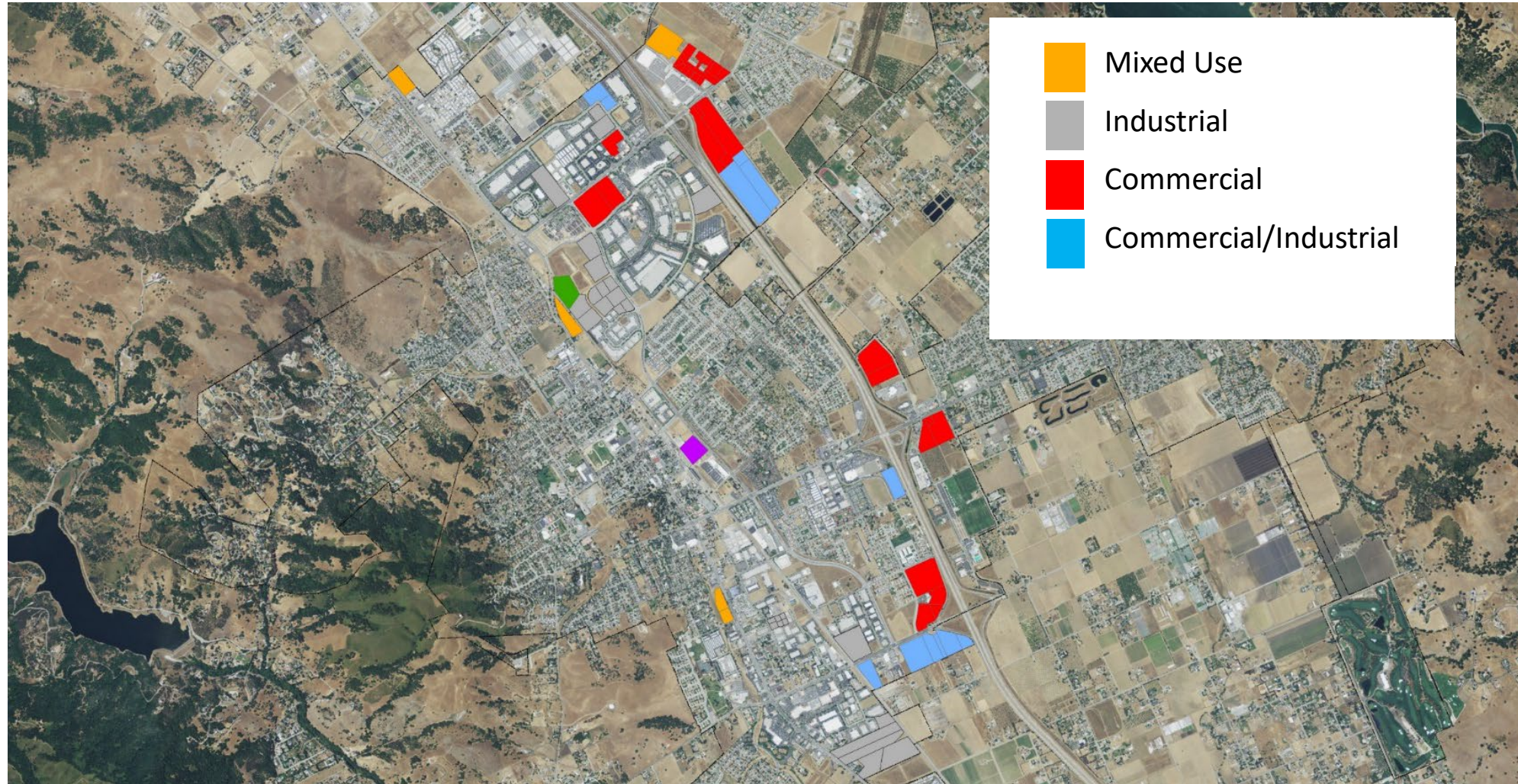


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CHOOSE MORGAN HILL

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CHOOSE MORGAN HILL

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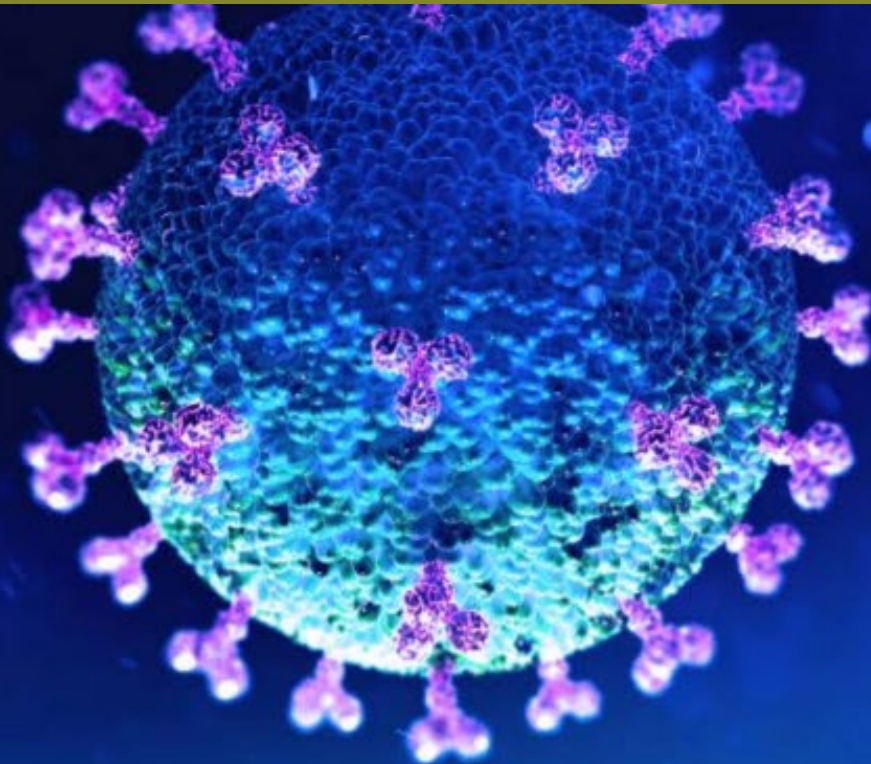
Existing Work Program, including PBID

+

1. Monterey Road/Complete Street Improvements Lane Reduction
2. Pop-up Retail/Window Activation
3. Event Programming & Placemaking
4. Buy Local Campaign
5. City Policies Review
6. Comprehensive Preliminary Review
7. EDA Grant

- Step out of our box & comfort zone
- Be mindful of idealistic vs realistic efforts
- Remove all the hurdles within our control
- Be fast, nimble, risk taking and creative.
- Be aware of what drives the primary funding of our City





CHOOSE **MORGAN HILL**

Questions?

City of Morgan Hill

Business Resiliency Roundtables Findings Summary

Restaurant Round Table – May 19, 2020

John Carr, Alcohol and Beverage Control Board (ABC) PIO

- New ABC temporary alcohol to-go policy
 - Businesses have been following the new compliance orders
 - Restaurants need to make sure that their alcohol is delivered in sealed containers
 - Restaurants need to continue to communicate with their delivery service(s) the importance of complying with the strict laws of handling alcohol
 - The possibility of allowing this new temporary policy to become a permanent one is a policy question that will need to be made by the California Legislator
- New guidelines for restaurants on social distancing and shared spaces will be available online by this week on the ABC's licensing division's website

Matt Sutton, California Restaurant Association

- Immediate Policy Actions taken by the Governor
 - Modified CA WARN ACT
 - ABC Flexibility
 - Franchise Tax Board Tax Payment Extension
 - Sales Tax Deferrals
 - Paid Sick Leave
 - Workers' Compensation
- Policy Issues Ahead
 - Safe Harbor/Legal Protection from frivolous lawsuits
 - Unemployment Insurance
 - Commercial Leases
 - Regulatory Pause
- Road to Re-opening requires the partnership and participation of the following agencies:
 - Restaurant/Public Health
 - CA Conference of Directors of Environmental Health
 - CA Conference of Local Health Officers
 - 23 Public Health Offices need to re-open
 - 5 recommended actions will be required from all counties
 - Requirements will vary a little from county to county
 - Template will be available
 - Topics for Employment training will be a huge component
 - Restaurants will need to make sure that employees are following CDC guidelines
 - Restaurants will need to make sure that all employees follow social distancing
 - Restaurants will need to make sure that they post a sign in front of their business stating that they are following proper protocols

- Restaurants will need to:
 - Use single use menus
 - Highly sanitize their customer space
 - Self service areas will need to be extra sanitized
 - Salsa and salad bars will be closed
 - New protocols will need to be developed for patrons waiting in line
- CRA is currently advocating for using current bar areas as places for patrons to wait
- Encourage cities to investigate outdoor spaces, parklet programs, current valet areas and parking spaces for restaurant expansion
- The question to allow the continuance of the to-go alcohol is currently in discussion but CRA will need to know data first before legislation is recommended
- Another policy question is the continuance of the delivery service from grocery stores to restaurants

Kathleen Wood, Restaurant Consultant

- Developed Restaurant 2020 guidelines
 - 38-page document that helps restaurant navigate the re-opening process
 - Offers practical solutions based on Kathleen's experience after Hurricane Katrina
 - Tool guide is available at: <https://www.kwoodpartners.com/>
- US Foods is another great resource for restaurants: <https://www.usfoods.com/>

Participants

- Allow tamper resistant containers
- Use the delivery of cannabis regulation as a guide for extending the to-go alcohol policy
- Utilize Facebook and other forms of social media as a place where restaurants can upload their menus
- Food Take Out & Delivery is a Facebook Page that any MH restaurant can join
- Visit Morgan Hill announced that they have masks and gloves for MH restaurants
- Will the City help restaurants with obtaining extra insurance needed for outdoor seating?
- Would the City help restaurants with the following:
 - Streamlining additional approval processes
 - Help with the extra insurance process that is currently needed
 - Extend outdoor seating
 - Clean sidewalks often if sidewalk is extended

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: Item 6 Supplement - FW: Help us Develop a Recovery Plan for Morgan Hill
Date: Monday, May 18, 2020 1:40:09 PM

From: John Kent <jp kent@ pacificoak. com>
Sent: Monday, May 18, 2020 11:23 AM
To: John Lang <[John. Lang@ morganhill. ca. gov](mailto: John. Lang@ morganhill. ca. gov)>; Edith Ramirez <[Edith. Ramirez@ morganhill. ca. gov](mailto: Edith. Ramirez@ morganhill. ca. gov)>
Subject: Re: Help us Develop a Recovery Plan for Morgan Hill

Hi Edith and John,

I hope that each of you, and your families, are doing well.

I'm very happy to learn of your proactive efforts to assist local businesses and our economy. Given your past track record, I'm not surprised. You and your team have done great things for our community. Thank you!

Of the various topics listed at the bottom of your message, the idea of "buying local" and "supporting local businesses" is what I believe will be most effective in terms of City of Morgan Hill actions.

Most importantly, we need to get State and County health officials to modify and/or terminate, as quickly as possible, the incredibly rigid lockdown and shelter in place rules. We need to trust people to make wise and prudent decisions, and get businesses back open, while at the same time encouraging those most vulnerable to stay safe.

Feel free to pass along this message to other members of City staff or the City Council.

Best wishes,

John

On Mon, May 18, 2020, 9:20 AM John Lang <[John. Lang@ morganhill. ca. gov](mailto: John. Lang@ morganhill. ca. gov)> wrote:

Hello Thought Leaders for Morgan Hill's Economic Blueprint. Edith and I wanted to share with you.

The City of Morgan Hill is starting to develop a local recovery plan. At the bottom of the email, I included a table that shows some of the ideas we are bringing forward to the City Council this Wednesday evening (5/20). **We want to hear YOUR ideas about what our businesses need to help with the economic recovery.**

You can share your ideas via email and/or join us at the following meetings:

1. **RESTAURANT RESILIENCY ROUNDTABLE:** Tuesday, May 19th at 10:30 AM

- a. Guest Host: California Restaurant Association.
- b. Register at www.choosemorganhill.com/covid19roundtables

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- a. Staff report on Economic Development Work Program & [Economic Recovery](#) ideas.
- b. Link to the City Council meeting: <https://bit.ly/052020CityCouncilMtg>

3. **TOWNHALL MEETING:** Thursday, May 21st at 5:30 PM

- a. One-hour meeting dedicated to hear business recovery ideas.
- b. link to the town hall: <https://bit.ly/Communitytownhall>

or simply...

4. **SEND US AN EMAIL**

- a. You can always send us an email that we can forward to the City Council
- b. Edith.ramirez@morganhill.ca.gov

MONTEREY ROAD IMPROVEMENTS Work with the Engineering Division to explore repurposing a traffic lane and on-street parking along Monterey Road through Downtown that create more space for retailers, restaurants, pedestrians and cyclists. Explore curbside pickup and other on-street parking policies that will help with deliveries, valet parking, etc.	POP UP RETAIL/WINDOW ACTIVATION Work with partners to develop opportunities to activate vacant windows and create non-brick and mortar retail opportunities, either with sidewalk activation or with temporary markets.	EVENT PROGRAMMING, DOWNTOWN PLACEMAKING Explore partnerships with community organizations to develop and execute events that will meet new distancing requirements and will activate Downtown. Activities could include art fairs and other placemaking opportunities like chalk art, outdoor art galleries, murals, and temporary art projects.
CITY POLICIES REVIEW Review City policies, including conditional use permits (CUPs) (hours of operation), Planned Developments (PDs) (clarity on development), Curbside Pickup, Telecommunication requirements for commercial and industrial developments, Placemaking and landscaping opportunities that will support the City's Place Branding, and Sign Policies that will support existing and new retail development.		

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From: [Edith Ramirez](#)
To: [Michelle Bigelow](#)
Cc: [Angie Gonzalez](#)
Subject: FW: Business Recovery Ideas
Date: Tuesday, May 19, 2020 2:28:29 PM

Item # 06
AGENDA DATE: 05/20/2020
SUPPLEMENT # 3

For Wednesday's CC meeting.

-----Original Message-----

From: Gabriel Reyes <greyes1170@gmail.com>
Sent: Tuesday, May 19, 2020 2:00 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Business Recovery Ideas

I strongly support the idea of closing off Monterey Rd. from Main to Dunne Ave, so that the local restaurants can put dining tables in the street, so that customers can enjoy a full dining experience.

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From: [Edith Ramirez](#)
To: [Angie Gonzalez](#); [Michelle Bigelow](#)
Subject: FW: Business recovery ideas
Date: Tuesday, May 19, 2020 2:35:27 PM

For Wednesday's CC meeting.

From: MicroArtistry Microblading <microartistrybrows@gmail.com>
Sent: Tuesday, May 19, 2020 12:43 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Business recovery ideas

Hi Edith,

I see that you sent an email requesting business recovery ideas. My husband and I own two businesses in Morgan Hill and rent out two brick-and-mortar offices here. (California Prenatal Imaging and MicroArtistry Microblading.)

Honestly, our business recovery idea is to move to Texas and get started over there. I think that by the time we open here for hair/tattoo we could be reestablished over there. We are applying for a home loan and are getting our professional licenses transferred as we speak.

I grew up in this town and my entire family is here. I am a strong woman, but I have spent many nights crying over this decision. It literally breaks my heart to have to move everything we have worked for and to force my children to leave their grandparents. But this shelter in place dragging on with no data to support it, no real plan to reopen/reopen dates and no logical reasons for one business being essential vs another, is the final straw.

(I won't even get into the release of criminals and the zero bail policy/the housing of the homeless with alcohol and drugs/general flagrant waste of our taxpayer money/deficit. That is all going to cause a major increase in crime and homelessness, as if Props 47 and 57 weren't enough.)

Our county is the slowest in the state (along with LA) to open and our city council newsletters just keep telling us to shelter in place and apply for aid. I don't want aid which will financially destroy the economy more, I want to work and my 1500+ clients want to see me. It is our right as Americans to work and to take the "risk" of getting sick, not the government's right to force us to stay home and starve.

I just recently spoke with a police officer who is a friend in the city of Monterey and she is very upset because all city Law Enforcement are now being asked to take a 20% pay cut. The city does not have the money to pay them because there is no money from tax revenue. And then I saw in the news that a business owner in Monterey who has kept his little Bistro open has been arrested. That's just plain wrong on every level. We are letting the criminals and rapists out of jail and responsible business owners who just want to make a living are being arrested. Absolutely ridiculous.

We went up to Placer County this week to visit family. Placer is defying the governor's illegal "order."

Restaurants and shops are open and seating responsibly. The mall is opening next week. They are taking matters into their own hands. One blanket rule for 40 million people does not work. It doesn't work even in one County as large as ours. (1.3 million people.) I have suggested to Mike Wasserman that we open district by district, starting with our District 1, the most rural district, but honestly this needs to go town-by-town and have the towns decide what's best for their own local economy based on their own numbers.

Good luck with this. I hope our entire economy doesn't completely tank, but the way the board of supervisors meetings are going, it seems it's inevitable. Honestly, I think that you all need to get control over our town and make changes that will result in what's best for all of us. Not just the 48 people that got and recovered from Covid. It's time for our elected officials to represent our people. Not just represent the governor's orders to us when all of you know it's wrong.

Thank you,
Amber

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From: [Edith Ramirez](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: Covid 19 Update
Date: Tuesday, May 19, 2020 2:36:38 PM

Item # 06
AGENDA DATE: 05/20/2020
SUPPLEMENT # 5

For Wednesday's Council meeting.

From: Anthony Stenberg <anthony@morganhillartschool.org>
Sent: Tuesday, May 19, 2020 12:35 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Cc: Chris Ghione <Chris.Ghione@morganhill.ca.gov>
Subject: Re: Covid 19 Update

Hi,

In regards to: Event Programming and Downtown Placemaking

Morgan Hill Art School is a local non-profit art organization. We work with several community organizations creating activities such as you listed.
Let me know how we can help the city out with any art projects you see coming in the future.
It is our mission to "Build Community through Art" so we can offer a lot of assistance in these events for you.

thank you
Anthony Stenberg
Director, Morgan Hill Art School
1295 East Dunne Ave, #210
(669)888-3622
MorganHillArtSchool.org

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From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: Morgan Hill City Council May 20 comment: Agenda Item #6: Business Recovery Plan
Date: Tuesday, May 19, 2020 9:48:51 PM

Dear Morgan Hill City Council,

Morgan Hill City Council Meeting May 20 comment
Agenda Item #6: Business Recovery Plan

It appears to me that your vision of the future for Business is to just restore the past.

So here are a few contrarian inputs for your consideration.

1) The Economic Development Team has been reporting for several years that retail consultants tell us that Morgan Hill is "over-retailed".

2) Downtowns are dense and utilize pre-built assets such as roads and water pipes, meaning they require less infrastructure spending per capita. [Note 1]

3) In addition to economic vibrancy, business districts [and shopping centers] also provide civic vibrancy and social interaction. [Note 1]

4) We have lost civic spaces in Downtown with the departure of Booksmart and the conversion of the GMA music hall. And the proposed City budget removes plans for preparation of the Monterey Corridor Specific Plan preparation and related EIR where we might have advocated for more civic spaces.

5) One way to provide housing in close proximity to essential services is to replace big box stores with multi-unit affordable housing. This also leverages pre-built infrastructure and eliminates costs of pre-construction ground surveys and utility access. [Note 2]

6) Another way to reduce pre-construction costs is to replace or add to existing buildings. One example from a recent paper on construction approaches was to add living units as upper floors to an existing fire station.

[Note 1] From a Brookings article by Adie Tomer and Lara Fishbane on Big City Downtowns are Booming

[Note 2] KQED Forum May 19 Hour 2
How the Coronavirus Pandemic Has Reshaped the Future of Retail

Thank you for your consideration, Doug Muirhead, Morgan Hill

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From: [Edith Ramirez](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: Help us Develop a Recovery Plan for Morgan Hill
Date: Wednesday, May 20, 2020 10:25:06 AM

For tonight.

From: Bina Roy Desai <bina@hiemorganhill.com>
Sent: Tuesday, May 19, 2020 8:02 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Fwd: Help us Develop a Recovery Plan for Morgan Hill

Edith,

Hope you and your family are keeping well.

Wanted to share my thoughts on this/I am in full support of what Amber so eloquently states below. The hotels/businesses support so much of the city's needs via tax dollars and without the green light to open more businesses/move into the next phase, we are bound for more cuts and job loss.

Thx

Bina~

----- Forwarded message -----

From: **Bina Roy Desai** <bina@hiemorganhill.com>
Date: Tue, May 19, 2020 at 6:43 PM
Subject: Re: Help us Develop a Recovery Plan for Morgan Hill
To: Krista Rupp <executivedirector@visitmorganhill.org>
Cc: Ashis Roy <ashis@hiemorganhill.com>, Samir Mshasha <samir@hiemorganhill.com>

This actually resonated with me... I am very frustrated and feel it's time for us to just do our own thing as a town.

By Amber Massa from Morgan Hill,

"The city of Morgan Hill has sent out an email asking for business recovery ideas. They said to feel free and send them an email with our ideas, so here's the email I sent.

I encourage all local business owners to send your own ideas of how to help the local economy recover and voice how this shelter-in-place has affected you and your family. Here's the email address to send them to :

Edith.ramirez@morganhill.ca.gov

Hi Edith,

I see that you sent an email requesting business recovery ideas. My husband and I own two businesses in Morgan Hill and rent out two brick-and-mortar offices here. (California Prenatal Imaging and MicroArtistry Microblading.)

Honestly, our business recovery idea is to move to Texas and get started over there. I think that by the time we open here for hair/tattoo we could be reestablished over there. We are applying for a home loan and are getting our professional licenses transferred as we speak.

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supervisors meetings are going, it seems it's inevitable. Honestly, I think that you all need to get control over our town and make changes that will result in what's best for all of us. Not just the 48 people that got and recovered from Covid. It's time for our elected officials to represent our people. Not just represent the governor's orders to us when all of you know it's wrong.

Thank you,
Amber Massa
(Morgan Hill business owner)

On Tue, May 19, 2020 at 2:56 PM Krista Rupp <executivedirector@visitmorganhill.org> wrote:

Hi Ashis,

So nice to "meet" you. I have enjoyed getting to know and work with Bina... although most of it has been remote due to our current reality.

Thank you for your message of healthy outlets for kids. I just had a quick conversation with the MHOSC director and shared your comments. The OSC is thinking through reopening, but until the SCC Public Health Dept provides an updated order allowing sports play (modified) and new parameters for safe operation, they are unable to implement anything.

SCC Public Health is just beginning to loosen some restrictions to other industries and it is difficult to say when they may address high contact activities like sports, but letting us know your thoughts is still helpful. Your ideas about distancing, capacity, and testing are noted and will be passed along to the appropriate channels.

I hope you are staying well. Please let me know if you have more thoughts or questions.

Kind regards,

Krista

Krista Rupp | Executive Director
Visit Morgan Hill
visitmorganhill.org
650.427.0511

From: Ashis Roy <ashis@hiemmorganhill.com>

Sent: Tuesday, May 19, 2020 10:48 AM

To: Krista Rupp <executivedirector@visitmorganhill.org>; Bina Roy Desai <bina@hiemmorganhill.com>

Subject: Re: Help us Develop a Recovery Plan for Morgan Hill

Hi Krista,

Does MH Sports Complex have a plan to open back up ? The Local kids are getting fed up / frustrated being at home, so even organizing small 3 x 3 soccer games, or some sport would be relief for the local community. There are a lot negative impacts to kids associated with Shelter in Place (depression, anxiety, etc..), and playing sports is one way to mitigate the adverse effect.

Christoper High School is offering free COVID testing, so testing can be a pre-requisite for playing....Just some ideas.

As testing capacity increases, we can potentially have tournaments again if the kids and parents have been tested. We can limit to one parent per child as a spectator to keep the number of people on the field to a minimum.

Please let me know your thoughts.

Thanks

(BTW, I'm Bina's brother)

Ashis Roy
Holiday Inn Express & Suites
[17035 Condit Road](#)
[Morgan Hill, CA 95037](#)
Hotel: 408.776.7676
Cell: 408.300.4800
ashis@hiemorganhill.com

On May 18, 2020, at 5:12 PM, Krista Rupp <executivedirector@visitmorganhill.org> wrote:

nd industrial developments. City to schedule prelim review once a month to allow developers to schedule meetings and receive immediate feedback across departments.

--

Bina Roy Desai www.hiemorganhill.com

--

Bina Roy Desai
Holiday Inn Express - Morgan Hill, CA
www.hiemorganhill.com
408.666.1022

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Item # 06

AGENDA DATE: 05/20/2020
SUPPLEMENT # 8

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: FW: Help us Develop a Recovery Plan for Morgan Hill
Date: Wednesday, May 20, 2020 12:55:29 PM

Michelle Bigelow, MMC, CPMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Sent: Tuesday, May 19, 2020 2:23 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Help us Develop a Recovery Plan for Morgan Hill

For Wednesday's CC meeting.

From: John Horner <jthorner@verizon.net>
Sent: Tuesday, May 19, 2020 12:02 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Cc: John Lang <John.Lang@morganhill.ca.gov>
Subject: RE: Help us Develop a Recovery Plan for Morgan Hill

That would be fine.

On a more positive note: Consider changing the parking requirements for retail shopping centers to allow conversion of up to 30% of parking space area for walking, seating, outdoor retail and such.

John

From: Edith Ramirez [<mailto:Edith.Ramirez@morganhill.ca.gov>]
Sent: Tuesday, May 19, 2020 10:09 AM
To: John Horner - Thinker Toys (jthorner@verizon.net)
Cc: John Lang
Subject: FW: Help us Develop a Recovery Plan for Morgan Hill

John, do you want us to submit this to the CC for Wednesday's night as part of public record?
Let me know. Thanks.

From: John Lang <John.Lang@morganhill.ca.gov>

Sent: Tuesday, May 19, 2020 9:06 AM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>; Leslie Little <Leslie.Little@morganhill.ca.gov>
Subject: FW: Help us Develop a Recovery Plan for Morgan Hill

Fyi.

From: John Horner <john@morganhill.org>
Sent: Tuesday, May 19, 2020 7:09 AM
To: John Lang <John.Lang@morganhill.ca.gov>
Subject: RE: Help us Develop a Recovery Plan for Morgan Hill

Hello John,

Feedback: Once again the city focus is on the downtown while the vast majority of business, retail and otherwise, happens outside that small area. As a long time owner of a non-downtown business I don't feel city government has ever given the non-downtown businesses the respect and appreciation they deserve and need. I've said this many times over the many years I've been involved, and the concern always gets blown off.

Also, those of us paying rent for permanent locations are not thrilled by the prospect of competing with pop-ups of various kinds that pay little or no rent.

So, think about how to support the entire business community, especially those who are figuring out how to survive through horrible times.

John Horner

From: [John Lang](#)
Sent: Monday, May 18, 2020 9:20 AM
To: [John Lang](#)
Subject: Help us Develop a Recovery Plan for Morgan Hill

Hello Thought Leaders for Morgan Hill's Economic Blueprint. Edith and I wanted to share with you.

The City of Morgan Hill is starting to develop a local recovery plan. At the bottom of the email, I included a table that shows some of the ideas we are bringing forward to the City Council this Wednesday evening (5/20). **We want to hear YOUR ideas about what our businesses need to help with the economic recovery.**

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- a. One-hour meeting dedicated to hear business recovery ideas.
 - b. link to the town hall: <https://bit.ly/Communitytownhall>

or simply...

4. **SEND US AN EMAIL**

- a. You can always send us an email that we can forward to the City Council
- b. Edith.ramirez@morganhill.ca.gov

MONTEREY ROAD IMPROVEMENTS Work with the Engineering Division to explore repurposing a traffic lane and on-street parking along Monterey Road through Downtown that create more space for retailers, restaurants, pedestrians and cyclists. Explore curbside pickup and other on-street parking policies that will help with deliveries, valet parking, etc.	POP UP RETAIL/WINDOW ACTIVATION Work with partners to develop opportunities to activate vacant windows and create non-brick and mortar retail opportunities, either with sidewalk activation or with temporary markets.	EVENT PROGRAMMING, DOWNTOWN PLACEMAKING Explore partnerships with community organizations to develop and execute events that will meet new distancing requirements and will activate Downtown. Activities could include art fairs and other placemaking opportunities like chalk art, outdoor art galleries, murals, and temporary art projects.
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From: [Edith Ramirez](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: The Local Leader's Toolkit: A Strong Towns Response to the Pandemic
Date: Wednesday, May 20, 2020 1:48:09 PM

For tonight.

From: Juan Miguel Munoz Morris <Juan.MunozMorris@morganhill.ca.gov>
Sent: Wednesday, May 20, 2020 1:11 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Re: The Local Leader's Toolkit: A Strong Towns Response to the Pandemic

Hello Edith,

Thanks for reaching out to solicit feedback for the Economic Recovery plan that the City is working on. I think this is an essential task for us to undertake, and I am very pleased to see the community was included in the conversation. I am sure you will receive lots of emails.

I am optimistic about the future of MH, and although we are facing a BIG challenge I am also excited for the opportunities a time like this provides for us. Now is the time to have some good discussion around how to best serve our community, and how to adapt our processes to the new normal we will experience.

I know that I sent you some comments on a separate email, but I wanted to stress my belief that we should centralize this effort around a "support local" approach. I also think it would be best to focus all recovery efforts on the community, the people we serve. If we can keep this as a filter for this conversation, I think we will end up with a much more robust, meaningful and effective plan to get our residents back on track, or even improve on what they had before.

The final thought I have is that we (city, PC and Council) need to be mindful of approaching this with a sense of humility, that we may not have all the answers or know what is best for every single person. Admitting to our humanity/mistakes will encourage the community to put aside this us vs. them mentality, and realize we are just another resident trying to help.

The link you sent was a wonderful read, thank you for sharing. As you could see, many of my comments line up with the document.

Thanks,

~JM

Get [Outlook for iOS](#)

From: Edith Ramirez <[Edith.Ramirez@morganhill.ca.gov](#)>
Sent: Wednesday, May 20, 2020 10:59:56 AM
To: CityCouncil <[CityCouncil@morganhill.ca.gov](#)>; Planning Commission <[Planning_Commission@Morgan-hill.ca.gov](#)>
Cc: Christina Turner <[Christina.Turner@morganhill.ca.gov](#)>; Jennifer Carman <[Jennifer.Carman@morganhill.ca.gov](#)>; Michelle Bigelow <[Michelle.Bigelow@morganhill.ca.gov](#)>
Subject: FW: The Local Leader's Toolkit: A Strong Towns Response to the Pandemic

Dear City Council and Planning Commission,

Here is a good read, courtesy of Michelle Bigelow, that is relevant to the conversation tonight and to our future workplan. Have a great day.

Edith

From: Michelle Bigelow <[Michelle.Bigelow@morganhill.ca.gov](#)>
Sent: Wednesday, May 20, 2020 10:27 AM
To: Leadership Team <[LeadershipTeam@Morgan-Hill.ca.gov](#)>
Subject: The Local Leader's Toolkit: A Strong Towns Response to the Pandemic

Thought this was interestin and wanted to share.

Strong Towns Local Leaders Toolkit:
https://static1.squarespace.com/static/53dd6676e4b0fedfbc26ea91/t/5ec3f7b81cb7b02be8cabed4/1589901242035/StrongTowns_Local_Leaders_Toolkit.pdf

Michelle Bigelow, MMC, CPMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

Item # 06

AGENDA DATE: 05/20/2020
SUPPLEMENT # 10

From: [Edith Ramirez](#)
To: [Angie Gonzalez](#); [Michelle Bigelow](#)
Subject: FW: Help us Develop a Recovery Plan for Morgan Hill
Date: Wednesday, May 20, 2020 4:46:26 PM

For tonight's Council meeting.

From: Liam Downey <liam.downey@morganhill.ca.gov>
Sent: Wednesday, May 20, 2020 12:42 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: Re: Help us Develop a Recovery Plan for Morgan Hill

Edith,

This is a tough discussion, We're dealing with extreme situations, and private businesses. Whether we like it or not, many are not going to recover. We are already seeing big names dropping out of the sky...and I think many more to come...unfortunately.

Looking at our City's feedback and predictions we are dealing with an unprecedented situation. **Desperate times call for desperate measures.** We will REALLY need to step out of our box, and comfort zone if we want to try and assist here.

Just like housing, the environment, traffic and many other state wide challenges and initiatives, we are all being painted with the same brush, asked to follow process and rules, many of which are designed and applicable to Cities, communities and economies much larger than ours. We are a mere 45 minutes away, but in no way are we Cupertino, Palo Alto, Mountain View, or San Mateo.

If all we do is follow the rules and play nice and be complaint, we are going to die on the vine. I fear we have a City leadership that is not willing to take any risk, not comfortable stepping out of the box, and overly conservative to really make any real impact here. Unless our leadership is willing to step up into an extremely uncomfortable zone, we wont have much of an effect.

We spend too many cycles and energy worrying about the squeaky wheel minority, the Facbook guru's, the caped crusaders who believe the City is crooked and can't do anything right and everything is sinister and has an agenda. I can guarantee you the people that need us the most now, are not these people. So let's not worry too much about them.

As a City, there is only so much you can do. But in what we cans do, we need to be fast, nimble, risk taking and creative.

We may need to break down the challenge and solutions by category. We seem to be focusing very much on downtown, on bars and restaurants, and not on what drives the primary funding of our City. Not saying a restaurant is not important and does not contribute to the local economy with sales tax and employment, But saving a restaurant and losing a car dealership and vastly different issues.

Or losing a major employer, like Anritsu, or Specialized or Lus America...huge impact.

As a City, we need to remove all the hurdles within our control. And even if they means defying some of the state guidelines, do it! We really need to take some risks here.

For example. Fast tracking CUP requests and changes to allow business more flexibility and ease of operations. I mean really fast tracking

Relaxing rules on take out alcohol and drinking outdoors.

Closing areas for significantly more pedestrian access while still maintaining social distancing guidelines

Buying local is a great idea but somewhat more idealistic than realistic. There is not a whole lot to buy locally that would have a big impact. Yes cars is an option, but we only have 2 dealers. But looking to provide some assistance to these dealers to pull in more external buyers...would that help?

What may name sense is to actually invest. I like the idea below to go get Federal and other state, local or even private money. Find an expert to focus on that.

My business is not impacted, but I would think, if I was local, here is where I would need the most help

1. Help me with my rent or my mortgage - delay, defer, reduce my monthly costs
2. Help me maintain my employees...help with the process to get federal aid, like the PPP program
3. Cheap money - works with the banks to secure very low interest short term money
4. help me with marketing to get my business back to some level of normality
5. Fast track, eliminate or change any local governmental processes that are barriers to me recovering (within reason)

But, the people that know best what they need to survive or recover are the businesses themselves. Find some way for them to better engage, in a less formal setting , in a workshop like brainstorming session.

My 2 cents..

Liam

On May 18, 2020, at 9:02 AM, Edith Ramirez <Edith.Ramirez@morganhill.ca.gov> wrote:

Dear Planning Commission

The City of Morgan Hill is starting to develop a local recovery plan. At the bottom of the email, I included a table that shows some of the ideas we are bringing forward to the City Council this Wednesday evening (5/20). **We want to hear YOUR ideas about what our businesses need to help with the economic recovery.**

You can share your ideas via email and/or join us at the following meetings:

1. **RESTAURANT RESILIENCY ROUNDTABLE:** Tuesday, May 19th at 10:30 AM
 - a. Guest Host: California Restaurant Association.
 - b. Register at www.choosemorganhill.com/covid19roundtables
2. **CITY COUNCIL MEETING:** Wednesday, May 20th at 7 PM (likely to be discussed after 8:30 PM)
 - a. Staff report on Economic Development Work Program & [Economic Recovery](#) ideas.
 - b. Link to the City Council meeting: <https://bit.ly/052020CityCouncilMtg>
3. **TOWNHALL MEETING:** Thursday, May 21st at 5:30 PM
 - a. One-hour meeting dedicated to hear business recovery ideas.
 - b. link to the town hall: <https://bit.ly/Communitytownhall>

or simply...

4. **SEND US AN EMAIL**
 - a. You can always send us an email that we can forward to the City Council
 - b. Edith.ramirez@morganhill.ca.gov

MONTEREY ROAD IMPROVEMENTS	POP UP RETAIL/WINDOW ACTIVATION	EVENT PROGRAMMING, DOWNTOWN PLACEMAKING
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Thank you for engaging. Please forward this email and we look forward to hearing from you.

Edith

Item # 06

AGENDA DATE: 05/20/2020
SUPPLEMENT # 11

From: Dixie D. Divine <ddivine@primecommercialinc.com>
Sent: Wednesday, May 20, 2020 7:39 PM
To: Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>
Subject: This is also good for restaurants

Sorry to bombard your inbox with all this... but Here's a good restaurant Covid handout from national restaurant association.

I have reached out to all my landlord's now 3 times with very few responses. Those that did respond didn't have many NEW ideas that the CITY could do but many ideas of what the tenants could do in preparation for the reopening. Here's a brief summary of some of my notes:

Restaurant and retailers ability to spill out into common areas, sidewalks and streets as necessary including consumption of alcohol- City to waive or reduce fee and expedite permits .
Relaxed/flexible restrictions on store hours (allowing for special senior or health impaired shopping/dinning hours)
Allow installation if Social Distancing signage, city to waive or reduce fee and expedite permits
Sales Tax breaks (of course 😊)
Designate specific pickup area, and curbside short term parking for delivery services.

Continue the community outreach and joint marketing efforts with city and private cooperation to notify all residents and business that Morgan Hill is open for business again and guidelines rules for Covid 19 social distancing practices. Perhaps try a city wide Texting and Social media campaign...

Provide free Moran Hill branded facemasks and disposable gloves.

Create establish drive thru Covid testing locations . If already in place provide a map with locations and hours

How can we help get the personal service business up and running sooner?

Ideas Landlord's & Tenants (Not sure how the city can help with these items):

Center Branded Facemasks and gloves
Special promotions to attract customers back to the centers
Install handwashing and sanitation stations throughout center and downtown
Staggering customers in shifts
Special hours for Senior and health compromised
Have PA or music systems add social distancing messages
Allow pop-up windows and locations
Provide uber eats to drive up/pick up location is unused handicapped spaces
Install social distancing signage and Masks required to enter at every entrance and in key common areas
Incorporate touchless pay options
Social distancing and shopping guidance markers
Restrooms for employees only
Partner with a Sanitation Consulting firm

Kindest regards,

Dixie D. Divine

CEO . Broker . Principal

<image001.jpg>

1543 Lafayette Street . Suite C

Santa Clara . CA 95050

408.879.4001 Direct

408.879.4000 Office

408.879.4004 Fax

408.313.8900 Cell *

ddivine@primecommercialinc.com

www.primecommercialinc.com

DRE License 00926251 & 01481181

"Creating Winning Solutions through Local Market Knowledge and Superior Service"

<image002.jpg>

<image003.jpg>

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<National-Restaurant-Association-COVID19-Reopening-Guidance.pdf>



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, May 20, 2020 7:00 p.m.

Virtual Meeting

Link to join the meeting can be found below, Morgan Hill, CA 95037

MEETING GUIDELINES

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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 Gonzlez

PROCLAMATIONS

Proclaiming the Week of May 17-23, 2020 as Public Works Week
Proclaiming the Month of May 2020 as Ehlers-Danlos Syndrome and Hypermobility Spectrum Disorder
Awareness Month

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

PUBLIC COMMENT

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PUBLIC COMMENT SUPPLEMENTS

ADOPTION OF AGENDA

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Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

Recommendation:

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

2. APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

Recommendation:

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

3. APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

Recommendation:

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

4. APPROVE THE MAY 6, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

5. CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

Recommendation:

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

Estimated Time: 90 Minutes

6. REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

Recommendation:

Review and provide direction on the Economic Development Business Recovery Work Program.

Estimated Time: 75 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 17000 Monterey Road

Agency Negotiators: Christina Turner, Chris Ghione

Negotiating Parties: Gavilan Community College District, City of Morgan Hill

Under Negotiation: Price and Terms of Payment for Lease

CLOSED SESSION ANNOUNCEMENT

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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.

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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

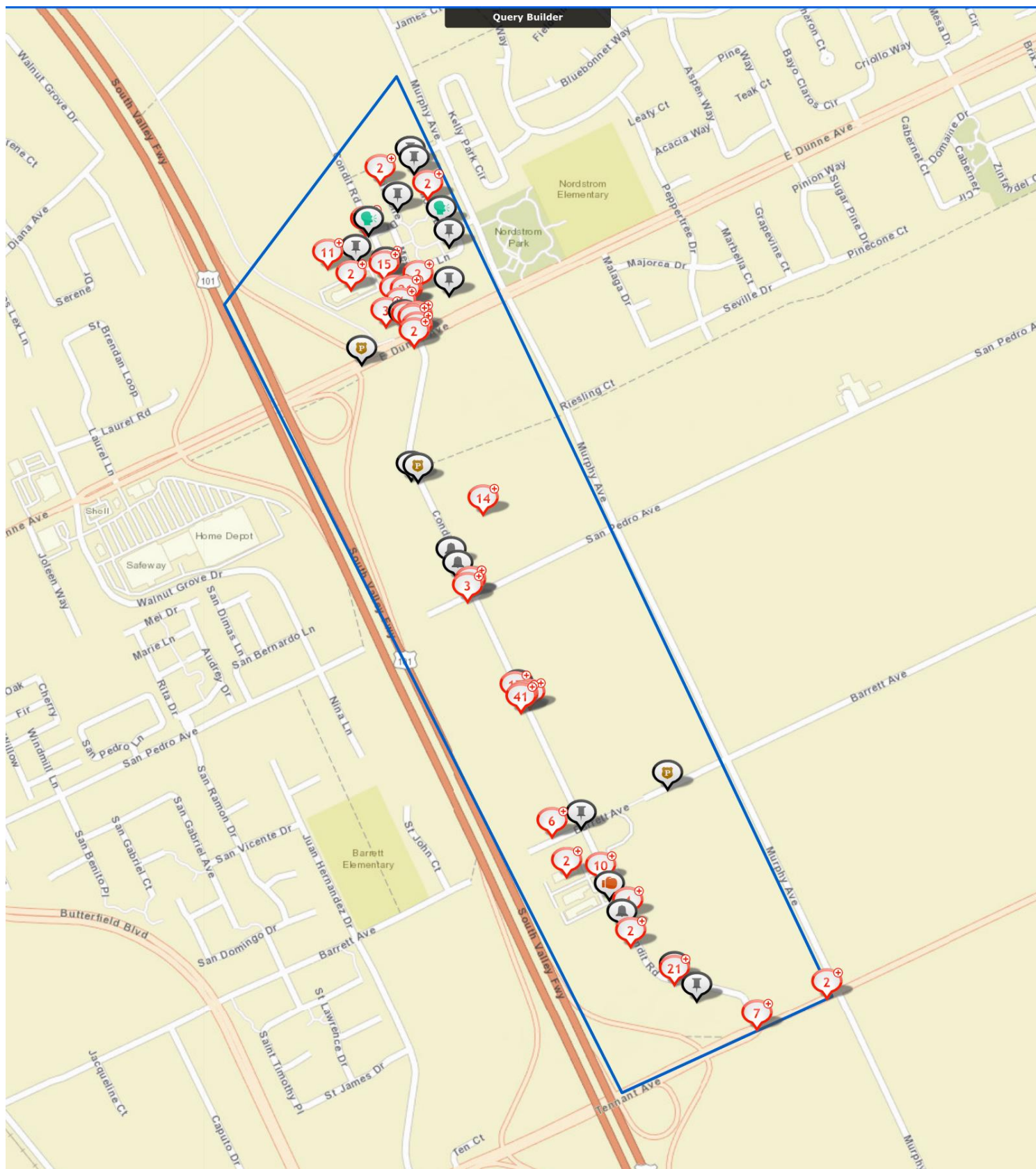
- Enhancing Public Safety
- Protecting the Environment and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community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



Source – MHPD CAD





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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



From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: supplement for 5-20-20 meeting
Date: Thursday, May 7, 2020 9:29:01 AM
Attachments: [2020-04-29.docx](#)

Michelle Bigelow, MMC, CPMC

Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill

City Clerk's Office

17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259

michelle.bigelow@morganhill.ca.gov

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From: John Lang <John.Lang@morganhill.ca.gov>
Sent: Thursday, May 7, 2020 9:23 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

For next public comment

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Thursday, May 07, 2020 9:19 AM
To: Barry Holtzclaw <bholtzclaw@newsvmmedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; Nathan Mixer <nmixter@newsvmmedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Tammy Brownlow <president@gilroyedc.org>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinforsupervisor@gmail.com>; supervisors@cosb.us; Sally <rebtruck@razzolink.com>; 'Pat Loe' <donpatloe@att.net>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; shawna freels <shawna.freels@ci.gilroy.ca.us>; Robert T. Dillon <rtdillon@garlic.com>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Editor, Gilroy Dispatch, Hollister Freelance and Morgan Hill Times,
Please publish Jon Coupal's Article as a Guest Editorial so that your readers will know how taxpayers feel about being shafted by boondoggle transit fiascoes, and higher gas & diesel taxes to subsidize bankrupt-from-conception public sector transit. We could save billions, and lower local government budget deficits if we privatized transit. Have all transit riders take Uber, Lyft, shuttles, taxis, and pay their fares, and we'd save big bucks. We cannot afford wasteful public sector transit, when we could have much more transportation for much less money,

Communication: Public Comment Supplements (PUBLIC COMMENT)

less fraud, less waste, and less abusive governance by unelected "directors" at joint power authorities that nobody ever voted for. If local elected Supervisors and Councilmembers cared for taxpayers, then they'd end the fraud, waste and abuse at the transit agencies, and that goes double for CAHSRA's Bullet-in-the-Brain Train.

Joseph P. Thompson, Esq.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

**cc: PUBLIC COMMENT: NEXT MEETING: VIRTUAL, REAL, REGULAR, SPECIAL,
STUDY SESSION, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT
MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"**

----- Forwarded Message -----

From: Jon Coupal <jon@hjta.org>

To: 'Joseph Patrick Thompson' <translaw@pacbell.net>

Sent: Monday, May 4, 2020, 09:54:47 AM PDT

Subject: RE: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]

Sent: Monday, May 04, 2020 9:08 AM

To: Jon Coupal <jon@hjta.org>

Subject: Re: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon,

Please send me a copy of your Article and I'll send it to my State Senator.

Joe Thompson

(408) 607----7351 cell phone

Napa

Communication: Public Comment Supplements (PUBLIC COMMENT)

On Saturday, May 2, 2020, 06:23:21 AM PDT, Jon Coupal <jon@hjta.org> wrote:

Wait until you see my column on Monday.

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]
Sent: Friday, May 01, 2020 2:29 PM
To: Jon Coupal <jon@hjta.org>; Senator Dodd <senator.dodd@senate.ca.gov>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Jon, and Senator Dodd,

We didn't vote for HSR like CAHSRA is cramming down our throats. We don't want it. Motorists cannot afford to pay more gas taxes for the subsidies it requires. We could have HSR without taxpayers paying a dime, if we put enough UPS, Fedex and Postal Service tonnage aboard HSR. But HSRC and then HSRA never listened to this private sector transport idea. They mistakenly believe that California's taxpayers have endless money.

Joe Thompson

(408) 607---7351 cell phone

----- Forwarded Message -----

From: HSR san.jose_merced@HSR <san.jose_merced@hsr.ca.gov>

Communication: Public Comment Supplements (PUBLIC COMMENT)

To: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Friday, May 1, 2020, 10:59:27 AM PDT

Subject: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

[Automatic Reply]

Thank you for taking the time to contact the California High-Speed Rail Authority. Your views and comments are important to our team. We receive a large amount of letters, phone calls and emails, and because this email is not monitored 24 hours a day and generally not on the weekends, we may not be able to respond to you right away. However, our team works very hard to ensure that all comments/questions are read and responded to, when appropriate.

If you have any questions about working at the Authority, please visit our High-Speed Rail Careers page here: <http://hsr.ca.gov/About/Careers/index.html>.

Thank you again for your interest in the California High-Speed Rail Program.

[California High-Speed Rail Authority](#)



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Communication: Public Comment Supplements (PUBLIC COMMENT)

NUCLEAR POWERED AIRCRAFT AND HIGH SPEED RAIL

Jon Coupal

A long forgotten aspect of the nuclear arms race was the costly undertaking by the United States to develop a nuclear powered aircraft as a strategic bomber.

Even before Allied powers defeated Nazi Germany in 1945, both the United States and the Soviet Union were battling for post-war superiority. With the successful detonation of two atomic bombs – bringing the Pacific Theater hostilities to an abrupt halt – the U.S. had a brief period of nuclear superiority over the USSR.

That would not last long as the USSR quickly accelerated its nuclear program and the Cold War was on.

In May 1946, the United States Army Air Forces started the Nuclear Energy for the Propulsion of Aircraft (NEPA) project. The alluring idea was to build an aircraft that could, in theory, stay aloft indefinitely. In 1951, the NEPA project was succeeded by the Aircraft Nuclear Propulsion (ANP) program.

However, despite the efforts of America's best nuclear and aviation scientists working with a virtually unlimited budget, the problems were insurmountable. The biggest hurdle was that nuclear reactors are very heavy. Sustaining one aloft with a fixed-wing aircraft turned out to be a challenge that could only be overcome by using a modified B-26 as a platform.

Reducing the weight of the reactors by shielding them with lighter material put the flight crews in danger from the high risk of radiation exposure. This latter problem never worried the Soviets in that their similar programs were willing to so expose the crews. But this led to an unacceptable mortality rate, even for the Russians.

After more than a decade of throwing good dollars after bad, the aircraft nuclear propulsion programs were substantially terminated by President John F. Kennedy in 1961.

The lessons of history should be instructive for Californians, who have watched for more than a decade as the state has thrown their money into the increasingly impossible high-speed rail program.

Even before the California High-Speed Rail bond proposal appeared on the ballot in November 2008, the Howard Jarvis Taxpayers Association commissioned a study in conjunction with the Reason Foundation because of deep concerns about the project's viability. The study, published in September 2008, warned:

"The CHSRA plans as currently proposed are likely to have very little relationship to what would eventually be built due to questionable ridership projections and cost assumptions, overly optimistic projections of ridership diversion from other modes of transport, insufficient attention to potential speed restrictions and safety issues and discounting of potential community or political opposition. Further, the system's environmental benefits have been grossly exaggerated, especially with respect to reduction of greenhouse gas emissions that have been associated with climate change."

Every negative prediction about the project came to be realized. Even initial advocates of the project, including a former chairman of the High Speed Rail Authority, have turned against the costly boondoggle.

At the end of 2018, California's own State Auditor issued a scathing report excoriating the project's mismanagement, waste and lack of transparency. Speed-readers needed to go no further than the subtitle to learn the conclusion: "Flawed Decision Making and Poor Contract Management Have Contributed to Billions in Cost Overruns and Delays in the System's Construction."

Nothing has improved since then, and much looks even worse.

In December of 2019, the Federal Railroad Administration objected to the California High-Speed Rail Authority's plan to issue a request for proposals to build train track and install electrical wiring and maintenance facilities. The FRA warned, "it is premature for CHSRA to undertake another major design-build contract." Disregarding the concerns, the rail authority went ahead the next day with its plan to issue the RFP.

In February, the Authority issued its latest two-year "business plan," which once again increased the projected cost and reported a further delay in completion. Color us shocked.

Soon after, a draft environmental document outlined the preferred route from Bakersfield to Palmdale, an engineering feat that would cost \$18.1 billion and

mow down a high school, a homeless shelter, a church, eight motels, 253 housing units, 311 businesses and 175 agricultural fields.

In March, the L.A. Times revealed that employees of the rail authority's top consultant had been ordered to hide bad news about the project.

There's no hiding it. The Legislative Analyst's Office concluded that the latest HSR business plan is not realistic, has significant funding challenges, is susceptible to further cost overruns and is inconsistent with voter intent because it relies on public subsidies.

In the 1960s, the President and Congress wisely pulled the plug on a failed project when it became obvious that all the money in the Pentagon couldn't make it fly. Until California's government wises up, we'll be stuck watching our taxpayer dollars fly out the window.

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: 5/20/20 public comment supplement
Date: Friday, May 15, 2020 3:56:32 PM
Attachments: [AGs Complaint against Uber & Lyft.pdf](#)

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Thursday, May 14, 2020 1:53 PM

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; Nathan Mixter <nmixter@newsymedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; shawna freels <shawna.freels@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rtdillon@garlic.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor-supervisor@gmail.com>; supervisors@cosb.us; 'Pat Loe' <donpatloe@att.net>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; cityclerk@hollister.ca.gov

Subject: LAWSUIT BY CALIFORNIA ATTORNEY GENERAL, SF, LA & SAN DIEGO, AGAINST UBER AND LYFT: ASSAULT ON SMALL BUSINESS IN CALIFORNIA

Dear Barry and Nathan,

At a time when California small business is under assault by the worldwide pandemic, that has cast our economy into the depths of a Great Depression, our State Attorney General and three big cities' attorneys sue small business owners in the transportation field. Already crucified, strangled and suffocated by governance abuses in California, and confiscatory taxes/fees, forced to subsidize government owned transport hemorrhaging red ink, transit agencies bankrupt-from-conception, capped-off by the Supermassive Black Hole Bullet Train, our government in California would snuff Californians trying to make a living. I thought we were to encourage small business? What hypocrites we are.

A few miles from my high school there were two garages where two sets of two young men started their small businesses:

Hewlett and Packard; and Jobs and Wozniak.

What would have happened if our government had snuffed-out those two small businesses started in garages in Cupertino and Los Altos?

AB-5 is contrary to the federal law signed by President Clinton, and carried in the House by Norm Mineta, later Secretary of Transportation.

So, do we want our law to encourage small business in transportation, as President Clinton and Norm Mineta wrote,

or do we want to crush transport small business like AB-5 does in California?

History shows that the sounder public policy is to encourage, not kill-off, small business.

Caveat viator.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

**cc: PUBLIC COMMENT: NEXT MEETING, VIRTUAL OR REAL; REGULAR, SPECIAL, STUDY
SESSION, PUBLIC
WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-
CALLED
MOBILITY PARTNERSHIP**

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Communication: Public Comment Supplements (PUBLIC COMMENT)

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Attorneys for the People of the State of California

**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

[Plaintiff's Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 *Additional Counsel for the People (Continued from Preceding Page):*

2 [COUNSEL LISTED IN ALPHABETICAL ORDER]

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4 City Attorney, City of Los Angeles

5 MICHAEL BOSTROM, SBN 211778

6 Managing Assistant City Attorney

7 DANIELLE GOLDSTEIN, SBN 257486

8 Deputy City Attorney

9 Office of the Los Angeles City Attorney

10 200 North Spring Street, 14th Floor

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17 Chief Deputy City Attorney

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23 San Diego, California 92101-4100

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Chief Deputy City Attorney

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San Francisco, California 94102-5408

Telephone: (415) 554-3800

E-mail: matthew.goldberg@sfcityatty.org

26 *Attorneys for the People of the State of California*

1 Plaintiff, the People of the State of California (“People”), by and through Xavier Becerra,
2 Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara
3 W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring
4 this action against Uber Technologies, Inc. (“Uber”), Lyft, Inc. (“Lyft”), and Does one through
5 fifty (collectively “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010
8 and 2012, respectively, they made the calculated business decision to misclassify their on-demand
9 drivers as independent contractors rather than employees. Both companies continue to
10 misclassify their drivers—and have exploited hundreds of thousands of California workers—in
11 direct contravention of California law.

12 2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and
13 requirements that implement California’s strong public policy in favor of protecting workers and
14 promoting fundamental fairness for all Californians. This longstanding policy framework
15 includes a comprehensive set of safeguards and benefits established by the State of California
16 (“State”), cities, and counties, such as minimum wages, overtime premium pay, reimbursement
17 for business expenses, workers’ compensation coverage for on-the-job injuries, paid sick leave,
18 and wage replacement programs like disability insurance and paid family leave. Uber and Lyft
19 owe their drivers these benefits and protections.

20 3. Recognizing the serious problem of employee misclassification and the harms it
21 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
22 Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5
23 (2019-2020 Reg. Sess.) (“A.B. 5”).) A.B. 5 codified and extended the California Supreme
24 Court’s landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018)
25 4 Cal.5th 903, reh. denied (June 20, 2018) (“*Dynamex*”). California law is clear: for the full
26 range of protections afforded by California’s Wage Orders, Labor Code, and Unemployment
27 Insurance Code, workers are generally presumed to be employees unless the hiring entity can
28

1 overcome this presumption by establishing each of the three factors embodied in the strict “ABC”
2 test.

3 4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber
4 and Lyft are traditional employers of these misclassified employees. They hire and fire them.
5 They control which drivers have access to which possible assignments. They set driver quality
6 standards, monitor drivers for compliance with those standards, and discipline drivers for not
7 meeting them. They set the fares passengers can be charged and determine how much drivers are
8 paid.

9 5. Uber and Lyft are transportation companies in the business of selling rides to
10 customers, and their drivers are the employees who provide the rides they sell. The fact that Uber
11 and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their
12 fundamental rights as employees.

13 6. But rather than own up to their legal responsibilities, Uber and Lyft have worked
14 relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature
15 declined. They utilize driver contracts with mandatory arbitration and class action waiver
16 provisions to stymie private enforcement of drivers’ rights. And now, even amid a once-in-a-
17 century pandemic, they have gone to extraordinary lengths to convince the public that their
18 unlawful misclassification scheme is in the public interest. Both companies have launched an
19 aggressive public relations campaign in the hopes of enshrining their ability to mistreat their
20 workers, all while peddling the lie that driver flexibility and worker protections are somehow
21 legally incompatible.

22 7. Uber’s and Lyft’s motivation for breaking the law is simple: by misclassifying their
23 drivers, Uber and Lyft do not “bear any of [the] costs or responsibilities” of complying with the
24 law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches:
25 “Our business would be adversely affected if Drivers were classified as employees instead of
26 independent contractors.” (Uber Securities and Exchange Com. (“SEC”) S-1, p. 28 [Filing Date:
27 April 11, 2019].)
28

8. As one federal district judge recently observed: “[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature” (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) ___ F.Supp.3d ___ [2020 WL 16484151, at *2].)

9. The State’s laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding” businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to “assume responsibility” for “the ill effects to workers and their families” of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the “erosion of the middle class and the rise in income inequality.” (A.B. 5, § 1(c).)

10. The time has come for Uber's and Lyft's massive, unlawful employee misclassification schemes to end. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because:

(i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Xavier Becerra, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and Dennis J. Herrera, the San Francisco City Attorney (collectively referred to as “Plaintiff” or the “People”).

15. Xavier Becerra is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under A.B. 5. (Lab. Code, § 2750.3(j).)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

18. The San Francisco City Attorney, Dennis J. Herrera, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city and county, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

II. DEFENDANTS

19. Defendant Uber Technologies, Inc. is a California corporation with its principal place of business in San Francisco, California.

20. Defendant Lyft, Inc. is a California corporation with its principal place of business in San Francisco, California.

21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are unknown to the People. The People are informed and believe, and on this basis, allege that each of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter collectively referred to as “DOES 1 through 50”), are legally responsible for the conduct alleged herein. The names and identities of defendants DOES 1 through 50 are unknown to the People, and when they are known the People will amend this Complaint to state their names and identities.

FACTUAL ALLEGATIONS

I. UNDER *DYNAMEX* AND A.B. 5, CALIFORNIA USES THE ABC TEST TO DETERMINE EMPLOYEE STATUS.

22. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903, along with the passage of A.B. 5, which went into effect January 1 of this year, have established that the ABC test governs the determination of whether a worker is properly classified as an employee or independent contractor for purposes of the Labor Code, the Unemployment Insurance Code, and the Wage Orders of the Industrial Welfare Commission (“I.W.C.”).

23. Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

1 establishing that *all* of the following three conditions are satisfied: (A) the worker is free from
2 the control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact; (B) the worker performs work that
4 is outside the usual course of the hiring entity's business; and (C) the worker is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as the
6 work performed. (Lab. Code, § 2750.3(a)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.)
7 These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

8 24. Because the hiring entity must establish all three parts of the ABC test in order to
9 lawfully classify a worker as an independent contractor, the hiring entity's failure to satisfy any
10 one part of the ABC test results in the worker in question being classified as an employee rather
11 than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

12 **II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT**
13 **SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH**
14 **DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.**

15 25. For the purpose of this Complaint, "Drivers" refers to individuals who fall into one or
16 both of the following two categories. *First Category:* All individuals who have driven for Uber
17 as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed
18 up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual
19 name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary
20 directly under their individual name or with a fictional/corporate name for their services as ride-
21 hailing drivers. *Second Category:* All individuals who have driven for Lyft as ride-hailing
22 drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive
23 directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with
24 a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their
25 individual name or with a fictional/corporate name for their services as ride-hailing drivers.
26 "Passengers" refer to individuals who receive Uber and/or Lyft ride-hailing services through such
27 Drivers.

28 26. Each Defendant operates a ride-hailing transportation service in which Passengers
may request and pay for on-demand rides from either Defendant by using that Defendant's

1 smartphone application (the “Uber App,” the “Lyft App,” “App” or “Defendant’s App”
2 respectively, and collectively, “Apps” or “Defendants’ Apps”).

3 27. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the
4 State of California to provide on-demand rides throughout the State to Passengers who book such
5 rides through either Defendant’s App.

6 28. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed
7 its name to Lyft, and subsequently sold the “Zimride” component of its business (a long-distance
8 carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a
9 market capitalization of approximately \$13 billion.

10 29. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had
11 a market capitalization of approximately \$53 billion.

12 30. Among the various ride-hailing options offered by Defendants, by far the largest is an
13 option in which individuals with non-commercial drivers’ licenses provide on-demand rides to
14 Passengers via each Defendant’s App using ordinary passenger vehicles. Lyft refers to this on-
15 demand option as a “Lyft.” Uber refers to this option as “UberX.”

16 **III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS**
17 **DRIVERS.**

18 31. Since first launching their ride-hailing services, each Defendant has misclassified, and
19 continues to misclassify, its Drivers as independent contractors instead of employees.

20 32. Each Defendant requires its Drivers, as a pre-condition of providing rides through
21 Defendant’s App, to agree to standard-form contracts and addenda. Each Defendant’s contracts
22 and addenda contain standardized terms and conditions that each Defendant sets regarding its
23 Drivers’ work. Each Defendant’s contracts and addenda also contain boilerplate language
24 unilaterally designating each Defendant’s Drivers as independent contractors.

25 **A. Part A of the ABC Test (“control and direction”)**

26 33. Each Defendant retains all necessary control over its Drivers’ work, which is to
27 transport Passengers from point A to point B in a car.
28

34. Each Defendant's App, in combination with each Defendant's policies, functions like an algorithmic manager that effectively supervises its Drivers like a human manager.

35. Each Defendant determines what Drivers are eligible to provide ride-hailing services on its App and can change its Driver standards in its discretion.

36. Each Defendant dictates the types of cars its Drivers may use on its app, as well as the standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its discretion.

37. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant retains the right to terminate or pause a Driver's tenure at any time in accordance with terms, conditions, and policies that each Defendant sets in its discretion.

38. Each Defendant sets the fares that Passengers pay for rides received through its App.

39. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

40. Each Defendant sets the amount of compensation that it pays its Drivers for providing ride-hailing services to Passengers on its App.

41. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of complaints that arise from its Drivers and Passengers.

42. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion, ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of compensation for ride-hailing services provided through the App.

43. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six hours if the Driver reaches a twelve-hour driving limit.

44. Each Defendant does not freely permit its Drivers to choose their routes. For example, if a Passenger complains to a Defendant about the route used by a Driver, each Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient route.

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 45. Each Defendant provides its Drivers with their work and pay by controlling the
2 dispatch of individual Passengers to individual Drivers through each Defendant's App. Each
3 Defendant's App controls which Drivers receive which ride requests and when.

4 46. Each Defendant controls and limits the information available to its Drivers and
5 Passengers through each Defendant's App, which each Defendant may change at any time
6 without notice.

7 47. When a Passenger requests an on-demand ride through Defendant's App, the App
8 shows and matches that Passenger with only one Driver at a time, regardless of the number of
9 nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App
10 shows and matches that Driver with only one Passenger at a time, regardless of the number of
11 nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on-
12 demand ride. Instead, they are selectively steered to one another through the centralized direction
13 of the App.

14 48. Each Defendant's App hides from its Passengers key information about its Drivers'
15 experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their
16 earnings in the way a true independent contractor or entrepreneur typically would.

17 49. Each Defendant's App allows its Drivers only approximately fifteen seconds to
18 accept or reject a trip request.

19 50. Drivers for each Defendant who consistently do not accept or reject trip requests
20 within the fifteen-second time limit may be temporarily logged out from each Defendant's App.
21 The length of this bar is within each Defendant's discretion.

22 51. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the
23 respective Defendant through its App of the Driver's trip status at every key step of the on-
24 demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of
25 the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to
26 constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

27 52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride
28 experience from which each Defendant derives its brand recognition, reputation, and value.

1 These rules, which each Defendant bills as “suggestions” or “tips,” cover matters such as music,
2 how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

3 53. Each Defendant retains the right to suspend or terminate its Drivers, or to cease
4 dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way
5 that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard.
6 These Driver behaviors can include, among other infractions, canceling too many rides, not
7 maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant
8 deems inefficient.

9 54. Each Defendant monitors, and ultimately controls, its Drivers through feedback it
10 solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its
11 Drivers’ performance. Each Defendant’s App solicits feedback and prompts its Drivers and
12 Passengers to rate one another from one to five stars for each Defendant’s benefit, as each
13 Defendant uses the ratings for its own discipline of Drivers.

14 55. Each Defendant determines the type of data and feedback its Drivers and Passengers
15 may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers
16 may provide feedback through its App.

17 56. Each Defendant uses information from its Passenger ratings to make decisions about
18 disciplining or terminating its Drivers. If the average rating of a Defendant’s Driver falls below a
19 certain threshold set by Defendant, Defendant may suspend or terminate that Driver from
20 providing ride-hailing services on Defendant’s App.

21 57. Each Defendant frequently experiments with software features that directly impact its
22 Drivers, creating an environment in which Drivers are subject to ever-shifting working
23 conditions, all determined in each Defendant’s discretion. According to Lyft, “We frequently test
24 driver incentives on subsets of existing drivers and potential drivers, and these incentives . . .
25 could have other unintended adverse consequences.” (See Lyft SEC 10-K, p. 20 [Filing Date:
26 February 28, 2020].) According to Uber, “[t]here are over 1,000 experiments running on our
27 platform at any given time.” (Deb et al., Under the Hood of Uber’s Experimentation Platform
28 (Aug. 28, 2018), <<https://eng.uber.com/xp/>> (as of May 1, 2020).)

1 58. Each Defendant introduces and then takes away features from its App in accordance
2 with its own business decisions. Each Defendant exerts control over its App, and thereby over its
3 Drivers.

4 **B. Part B of the ABC Test (“usual course of business”)**

5 59. Each Defendant’s Drivers are engaged in work that is within the usual course of each
6 Defendant’s business: the provision of on-demand rides. Each Defendant is a transportation
7 company that sells on-demand rides to its customers, i.e., its Passengers, who book and pay for
8 such rides through the Defendant’s App.

9 60. Drivers provide the on-demand ride. They are an integrated and essential part of each
10 Defendant’s transportation business. The immediate availability and temporal convenience of an
11 on-demand ride is the service that each Defendant sells to its Passengers.

12 61. Each Defendant publicly holds itself out to the public as a transportation company in
13 the business of selling on-demand rides.

14 62. Lyft has trademarked the slogan, “Your Friend with a Car.” Lyft advertises: “Get a
15 Ride Whenever You Need One”; “A ride in minutes”; and “Our drivers are always nearby so you
16 can get picked up, on demand, in minutes.”

17 63. Uber has trademarked the slogan, “Everyone’s Private Driver.” Uber advertises: “We
18 built Uber to deliver rides at the touch of a button”; “Always the ride you want”; “Request a ride,
19 hop in, and go”; “Sign up to ride. Rides on demand”; and “Get a reliable ride in minutes, at any
20 time and on any day of the year.”

21 64. Each Defendant represents to Passengers that it prescribes the qualifications of
22 Drivers on its App, as well as standards for Drivers’ quality of services. Each Defendant bills its
23 Passengers directly for the entire amount of the on-demand ride, and each Defendant’s Passengers
24 pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with
25 the quality of the on-demand ride provided through Defendant’s App, they report that problem to
26 Defendant, and Defendant may refund or cancel the Passenger’s fare.

27 65. Each Defendant is financially integrated with and dependent on its Drivers. Each
28 Defendant only generates income for its ride-hailing business if its Drivers transport and provide

rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

66. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

67. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on-demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

68. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

1 further improve the rider experience.” (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019],
2 emphasis added.) The prospectus identifies a “key factor” affecting Lyft’s performance as
3 “*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace.”
4 (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft’s
5 business model, “Why Lyft Wins,” Lyft’s IPO prospectus definitively answers: because Lyft is
6 “Driver-Centric.” (Id., at p. 3.)

7 70. Uber’s prospectus for its 2019 IPO also describes how Drivers, and the labor they
8 furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not
9 mince words: “If we are unable to attract or maintain a critical mass of Drivers . . . our platform
10 will become less appealing to platform users, *and our financial results would be adversely*
11 *impacted* Any decline in the number of Drivers . . . using our platform *would reduce the*
12 *value of our network and would harm our future operating results.*” (See Uber SEC S-1, *supra*,
13 at pp. 29-30, emphasis added.) Uber’s business model begins and ends with its Drivers.

14 **C. Part C of the ABC Test (“independently established trade, occupation, or**
15 **business”)**

16 71. Each Defendant’s Drivers are not engaged in an independently established trade,
17 occupation, or business of the same nature as the work they perform for each Defendant. Driving
18 itself is not a distinct trade, occupation, or business.

19 72. When driving for each Defendant, Drivers are not engaged in their own transportation
20 business, but are instead driving Passengers and generating income for the respective Defendant.

21 73. There are no specialized skills or training necessary to drive passengers on a ride-
22 hailing service. Consequently, each Defendant permits Drivers without any such skills or training
23 to provide on-demand rides on its App. For example, both of Defendant’s largest ride-hailing
24 options, “Lyft” and “UberX,” permit Drivers to offer ride-hailing services with an ordinary
25 driver’s license and a personal vehicle.

26 74. Each Defendant provides its Drivers with a necessary tool and instrumentality to
27 perform their on-demand, ride-hailing services—its App.

1 75. Each Defendant's App is the exclusive means by which Passengers and Drivers can
2 connect to, request, and provide each Defendant's on-demand rides.

3 76. Each Defendant's Drivers generally invest little to no capital to drive for each
4 Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a
5 smartphone and a car.

6 77. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents
7 its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running
8 their own independent businesses.

9 78. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers'
10 earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate
11 of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and
12 advertising of each Defendant's brand.

13 79. The limited economic levers that each Defendant leaves to its Drivers, such as
14 whether to drive at busier times or for more hours, are not consistent with the level of decision-
15 making normally exercised by entrepreneurs or those operating their own independent businesses.

16 80. Each Defendant limits its Drivers' ability to freely decline and cancel rides that
17 Drivers think will be unprofitable.

18 81. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus
19 to gauge their potential earnings based on demand for their services.

20 82. Each Defendant limits its Drivers' ability to share their accounts with other Drivers,
21 thereby curtailing its Drivers' ability to individually expand their business offerings.

22 83. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting
23 the ability of its Drivers to market themselves independently for repeat rides outside of
24 Defendant's App.

25 84. Each Defendant limits its Drivers' ability to take advantage of its App's financial
26 incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it
27 invites to participate in various, time-limited financial incentives that, for example, reward
28 Drivers for driving longer, or for driving at certain times and places. These financial incentives

1 are targeted to individual Drivers based on each Defendant's own opaque criteria as implemented
2 by the algorithmic decision-making engines in its App. By selecting which Drivers will be
3 invited to participate in which financial incentives and on what individualized terms, each
4 Defendant, in effect, chooses which Drivers are financial "winners" and "losers." Each
5 Defendant as the employer, not the Driver as an "entrepreneur," determines the Driver's earnings.

6 85. Each Defendant controls its Drivers' ability to earn compensation via its App, making
7 trade-offs between its Drivers' earnings and the price each Defendant charges to Passengers to the
8 benefit of each Defendant's profit.

9 86. Lyft describes these trade-offs in its 2019 annual SEC report reporting that "changes"
10 made by Lyft "may be viewed positively from one group's perspective (such as riders)" and
11 "negatively from another's perspective such as (drivers)." (See Lyft SEC 10-K, *supra*, at p. 24.)

12 87. Uber's SEC filings describe how the "greatest impact" on Uber's Take Rate (the
13 company's "take" on the difference between the Passenger's fare on a ride and what the ride-
14 hailing company pays out to the Driver) has "historically" come through Uber's unilateral
15 "adjustments to Driver incentives." (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO
16 prospectus, Uber freely admits the control it exerts over its Drivers' earnings—and the fact that
17 Uber's own profit comes at its Drivers' expense: "[A]s we aim to reduce Driver incentives to
18 improve our financial performance, we expect Driver dissatisfaction will generally increase."
19 (*Id.*, at p. 30.)

20 **IV. DEFENDANTS' UNLAWFUL MISCLASSIFICATION OF DRIVERS** 21 **RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.**

22 88. It is evident that neither Uber nor Lyft can meet their burden of showing that their
23 Drivers are independent contractors under California's ABC test for misclassification as adopted
24 in *Dynamex*, *supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test,
25 Defendants exercise control over their Drivers through their Apps, which, in combination with
26 their policies, function like algorithmic managers that effectively supervise Defendants' Drivers
27 like human managers. Under Part B of the ABC test, Drivers perform services within
28

1 Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC
2 test, Defendants cannot show that Drivers have established independent businesses.

3 89. Uber claims that “Drivers are at the heart of our service” and Lyft claims that Drivers
4 are “what makes Lyft ... Lyft.” But by misclassifying their Drivers, Defendants have devised an
5 unlawful business model that denies these very same Drivers the protections and benefits they
6 have rightfully earned as employees, and thereby gained an unlawful and unfair competitive
7 advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers,
8 undermines law-abiding competitors, evades Defendants' responsibility to contribute their share
9 as employers into the State's social insurance programs, and harms taxpayers who are often called
10 upon to address the negative consequences to Drivers and their families of Defendants'
11 exploitative employment practices.

12 **A. Defendants' unlawful misclassification deprives Drivers of their rights as**
13 **employees.**

14 90. Defendants' misclassification of their Driver workforce has allowed Defendants to
15 gain an unlawful competitive advantage over their competitors by circumventing the protections
16 and benefits that the law requires employers to provide to their employees. The laws violated by
17 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
18 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
19 benefits, and social insurance programs.

20 **1. Minimum Wages**

21 91. The law requires Drivers to be paid the applicable state or local minimum wage for
22 each hour worked, regardless of the compensation formula or method.

23 92. Defendants do not guarantee their Drivers a minimum wage under state and local
24 laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance
25 of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic
26 pricing pay surges, base rates, and minimum fares.

27 93. Defendants do not pay their Drivers for all their hours worked. Examples where each
28 Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

1 cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to
2 and returning from rides, and time spent logged on and monitoring each Defendant's App for ride
3 requests. Defendants cannot provide on-demand rides without the performance of these tasks.

4 94. Defendants have failed—and continue to fail—to meet their minimum wage
5 obligations with respect to their Drivers, including hours that are entirely unpaid and hours that
6 are paid at less than the applicable minimum wage.

7 **2. Overtime Wages**

8 95. The law requires Drivers to be paid the applicable overtime rate of pay—one-and-
9 one-half times or two times the Drivers' regular rate of pay—for all hours worked in excess of
10 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
11 seventh consecutive day of work in a workweek.

12 96. Defendants do not pay their Drivers overtime as required by law, despite the fact that
13 Drivers working overtime help Defendants to ensure the steady and constant supply of rides on
14 which Defendants' businesses depend.

15 97. Defendants have failed—and continue to fail—to meet these overtime pay obligations
16 with respect to their Drivers.

17 **3. Business Expenses**

18 98. The law requires Drivers to be paid or reimbursed for the necessary expenses in
19 performing their work.

20 99. Drivers pay for business expenses they incur in the course and scope of performing
21 their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear,
22 registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated
23 with using Defendants' Apps.

24 100. These expenses are substantial. For example, the Internal Revenue Service publishes
25 a "standard mileage rate," which currently estimates the cost of operating a vehicle for business
26 purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their
27 vehicles, without any reimbursement for this significant, work-related expense.
28

101. Defendants impose all the costs of operating the vehicles necessary to perform their ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business without them.

102. Defendants have failed—and continue to fail—to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

103. The law requires Drivers to be provided with one 30-minute duty-free meal period for a work period of more than five hours, and a second 30-minute duty-free meal period for a work period more than ten hours. The law further requires Drivers to be provided a ten-minute, paid, off-duty rest period for every four hours worked, or major fraction thereof. Authorized or required rest period time shall be counted as paid time worked.

104. Defendants do not provide for off-duty meal periods and do not authorize or permit paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the employee's regular rate of compensation for each failure, as required by law.

105. Defendants have failed—and continue to fail—to meet these meal and rest period obligations with respect to their Drivers.

5. Wage Statements

106. The law requires Drivers to receive regular and complete itemized wage statements from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly wages, piece rate wages, rest period pay, and nonproductive time pay.

107. Defendants do not provide Drivers with itemized wage statements in conformance with California law.

108. Defendants have failed—and continue to fail—to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

109. The law requires Drivers to be provided paid sick leave benefits as specified under California law and various local laws, including, but not limited to, the Los Angeles, San Diego, and San Francisco sick leave ordinances.

110. The law currently requires Drivers in San Francisco to receive health care expenditures of \$3.08 per hour. In recent years the rate has ranged between \$2.53 and \$3.08 per hour.

111. Drivers do not accrue the paid sick leave benefits or receive the health care expenditures from Defendants that employers are required to provide under state and local law.

112. Defendants have failed—and continue to fail—to meet these sick leave and health care expenditure obligations with respect to their Drivers.

7. Social Insurance Programs

113. The law requires Defendants to remit contributions or take other mandatory actions under the State’s social insurance programs, including, but not limited to, unemployment insurance, disability insurance, paid family leave, workers’ compensation, and San Francisco’s Paid Parental Leave Ordinance.

114. These programs are intended to provide wage replacement and other benefits in the event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to care for a family member, or is otherwise unable to work.

115. Defendants have failed—and continue to fail—to meet these social insurance program obligations with respect to their Drivers.

B. Defendants’ unlawful misclassification harms law-abiding competitors and would-be competitors.

116. Defendants’ unfair and unlawful treatment of their Drivers also confers an unfair advantage on Defendants over their law-abiding competitors and would-be competitors. Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full compensation and benefits they earn as employees to offer their ride-hailing services at an artificially low cost, decimating competitors and generating billions of dollars in private investor wealth off the backs of vulnerable Drivers.

117. Defendants’ misclassification of their Drivers allows both companies to unlawfully reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they

1 lawfully classified and compensated their Drivers as employees, including reimbursing Drivers
2 for their vehicle maintenance and fuel expenses.

3 118. Because driver compensation, along with vehicle maintenance and fuel expenses,
4 generally constitutes the lion's share of operating costs for a car service, Defendants' illicit
5 savings allow them to gain an out-sized competitive advantage over other transportation
6 providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and
7 vehicle costs of running a transportation service from well-resourced Defendants onto their
8 under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a
9 substantial competitive disadvantage.

10 119. In addition to avoiding paying Drivers for the full compensation and reimbursements
11 they earn as employees under state and local wage and hour laws, Defendants also avoid paying
12 their share of state and local payroll taxes and workers' compensation insurance premiums.

13 120. On information and belief, the illicit cost savings Defendants have reaped as a result
14 of avoiding employer contributions to state and local unemployment and social insurance
15 programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the
16 full compensation and benefits they are guaranteed under law as employees pushes the total
17 amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be
18 competitors who cannot enter the market—even higher.

19 **FIRST CAUSE OF ACTION**

20 **INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF** 21 **BUSINESS AND PROFESSIONS CODE SECTION 17200** 22 **(Against all Defendants)**

23 121. The People reallege and incorporate by reference each allegation contained in the
24 above paragraphs as if fully set forth herein.

25 122. Defendants have engaged, and continue to engage, in acts or practices that are
26 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
27 section 17200 of the Business and Professions Code. These acts or practices include, but are not
28 limited to, the following:

- a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;
- b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently \$13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);
- c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently \$15.59 per hour);
- d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently \$14.25 per hour);
- e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently \$13.00 per hour);
- f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);
- g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;
- h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;
- i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

- j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;
- k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;
- l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;
- m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;
- n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;
- o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;
- p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;
- q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;
- r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;
- s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;
- t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;
- u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

Communication: Public Comment Supplements (PUBLIC COMMENT)

v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C. Wage Order 9-2001, and other local employee protection laws.

123. Each Defendant's misclassification of its Drivers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provision of Labor Code section 2750.3, and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3) (Against all Defendants)

124. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

125. A.B. 5 permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in excess of 750,000, or by a City Attorney in a city and county.

126. Each Defendant continues to misclassify its Drivers as independent contractors.

127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to prevent the continued misclassification of each Defendant's Drivers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, that each Defendant, their successors, agents, representatives, employees, and all persons who act in concert with each Defendant, be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

- 1 2. Pursuant to Business and Professions Code section 17203, that the Court enter all
2 judgments as may be necessary to restore to any person in interest any money or property that
3 may have been acquired by violations of Business and Professions Code section 17200 as may be
4 proved at trial;
- 5 3. Pursuant to Business and Professions Code section 17206, that each Defendant be
6 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions
7 Code section 17200 et seq., as proven at trial;
- 8 4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
9 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
10 perpetrated against a senior citizen or disabled person, as proven at trial;
- 11 5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from
12 continuing to misclassify its Drivers as independent contractors;
- 13 6. That the People recover their costs of suit; and
- 14 7. Such other and further relief that the Court deems appropriate and just.
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Communication: Public Comment Supplements (PUBLIC COMMENT)

1 Dated: May 5, 2020

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 MICHAEL L. NEWMAN
5 Senior Assistant Attorney General
6 SATOSHI YANAI
7 Supervising Deputy Attorney General
8 MARISA HERNÁNDEZ-STERM
9 MANA BARARI
10 R. ERANDI ZAMORA-GRAZIANO



11 MINSU D. LONGIARU
12 Deputy Attorneys General
13 *Attorneys for the People of the State of*
14 *California ex rel. Xavier Becerra, Attorney*
15 *General*

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17 City Attorney, City of Los Angeles
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19 Managing Assistant City Attorney
20 DANIELLE GOLDSTEIN
21 Deputy City Attorney

22 MARA W. ELLIOTT
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24 MARK ANKCORN
25 Chief Deputy City Attorney
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28 Deputy City Attorneys

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Chief of Complex and Affirmative Litigation
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MATTHEW D. GOLDBERG
Deputy City Attorneys

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Communication: Public Comment Supplements (PUBLIC COMMENT)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

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

APPROVE SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION

RECOMMENDATION(S)

Authorize the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

REPORT NARRATIVE:

The purpose of this City Council report is to request authorization for the City Manager to execute the Second Amendment to the Agreement for Countywide Household Hazardous Waste Collection Program (Attachment 1).

Since 1993, the City has met its obligation to provide for household hazardous waste disposal by participating in the Countywide Collection Program. This popular program provides City residents with the opportunity to participate in several collection events each month. The permanent collection center in San Martin has improved the convenience associated with these services. It is estimated that over 1,500 Morgan Hill households will participate in a collection event in the coming fiscal year.

In 2018, the Council authorized the City Manager to execute a three-year Countywide Household Hazardous Waste Agreement. Because this agreement includes the collection schedule for the year and the augmentation amount elected by the City, it requires an annual amendment. The First Amendment with the Fiscal Year 2019-20 collection schedule was approved by the Council last year. The sole purpose of this item is to approve the City's execution of the Second Amendment to the Agreement with the FY 2020-21 schedule and updated augmentation amount. Based on the City's experience, an annual augmentation of \$60,000 should ensure that all Morgan Hill residents desiring to participate in the program will be allowed to do so. This is identical to last year's amount and reflects expected program usage. Note that this augmentation exclusively includes funds generated by a Countywide fee and anticipates no expenditures from the General Fund.

COMMUNITY ENGAGEMENT: Inform

The recommended action is an extension of a long-standing program with no changes proposed so no engagement activities were conducted prior to presenting the amendment for Council consideration. Should the Second Amendment be approved, staff will continue to inform the public about the availability of the County program.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the Second Amendment and direct staff to further evaluate the provision of these services and the recommended augmentation amount.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The current agreement was approved by the City Council on May 2, 2018 (Attachment 3) and the First Amendment was approved on June 5, 2019 (Attachment 2). The Council has historically acted annually on either an agreement or an amendment to the agreement for over 20 years.

FISCAL AND RESOURCE IMPACT:

It is estimated that providing services to Morgan Hill residents participating in the County program will cost approximately \$110,000 in Fiscal Year 2020-21. Since the Countywide AB939 fee revenues credited to Morgan Hill for this purpose should total approximately \$156,000, it is not anticipated that any funding from the City's General Fund will need to be expended for this service. Any AB939 fee revenues remaining in the City's credit will be refunded to the City for use in promoting the program. The refunded amounts are deposited into the General Fund (010), GL#: 010.37706.

CEQA (California Environmental Quality Act):

Categorical Exemption

Approval of the Second Amendment is categorically exempt from environmental review under the Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Morgan Hill 2nd Amendment FY 2021
2. Executed First Amendment
3. Executed Morgan Hill HHW Agreement FY19-21

SECOND AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on June 19, 2018, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive, or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$54,700.00 to the Countywide HHW Program during Fiscal Year 2018-2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes COUNTY to use CITY's Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000.00 to the Countywide HHW Program during Fiscal Year 2019-2020 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000 to the Countywide HHW Program during Fiscal Year 2020-2021 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-2, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding

portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

//

2. Attachment C-2 "HHW Schedule For Collection Events for Fiscal Year 2020/2021" attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this Second Amendment to the AGREEMENT effective as of the last date shown below:

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL

Signature:

Signature:

Jeffrey V. Smith
County Executive

Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

Stephanie Safdi
Deputy County Counsel

Date: _____

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

ATTACHMENT C - 2

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2020/2021

HHW SCHEDULE FOR FISCAL YEAR 2020/2021

2020/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Wed,Thurs	1,2	San Martin	Permanent	
	Wed,Thurs	1,2	San Jose	Permanent	
	Fri,Sat	3,4	No Event	No Event	4th OF JULY WEEK
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
August	Fri, Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Saturday	15	Mountain View	Temporary	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27, 28,29	San Jose	Permanent	
September	Thurs, Fri	3,4	San Martin	Permanent	
	Thurs, Fri	3,4	San Jose	Permanent	
	Saturday	5	No Event	No Event	LABOR DAY WEEKEND
	Thurs, Fri	10,11,12	San Jose	Permanent	
	Saturday	12	Santa Clara	Temporary	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
October	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs,Fri,Sat	29,30,31	San Jose	Permanent	
November	Fri, Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	No Event	No Event	THANKSGIVING
December	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Thurs,Fri,Sat	24,25,26	No Event	No Event	CHRISTMAS
	Thursday	31	San Jose	Permanent	

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

HHW SCHEDULE FOR FISCAL YEAR 2020/2021-continued					
2021/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri, Sat	1,2	No Event	No Event	NEW YEAR's DAY
	Fri, Sat	8,9	San Martin	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	San Jose	
	Thurs,Fri,Sat	14,15,16	San Jose	San Jose	
	Saturday	16	Sunnyvale	Temporary	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
	Saturday	30	Santa Clara	Temporary	
February	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
March	Fri, Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
April	Fri, Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs, Fri,Sat	8,9,10	San Jose	Permanent	
	Saturday	10	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Saturday	17	Sunnyvale	Temporary	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Saturday	24	Santa Clara	Temporary	
May	Fri, Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs, Fri	27,28	San Jose	Permanent	
	Saturday	29	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri, Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Saturday	19	Milpitas	Temporary	TBD
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	

*SUBJECT TO CHANGE

4/6/2020

Attachment: Morgan Hill 2nd Amendment FY 2021 (2735 : 2nd HHW Amend 2020)

**FIRST AMENDMENT TO THE AGREEMENT FOR COUNTYWIDE HOUSEHOLD
HAZARDOUS WASTE COLLECTION PROGRAM**

The Agreement for Countywide Household Hazardous Waste Collection Program (AGREEMENT) by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) previously entered into on July 1, 2018, is hereby amended as set forth below.

The COUNTY and the CITY agree that:

1. Section 16. ADDITIONAL SERVICES UNDER THIS AGREEMENT is amended in full to read:

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive, or designee. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$54,700.00 to the Countywide HHW Program during Fiscal Year 2018-2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes COUNTY to use CITY's Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

CITY agrees to augment up to an additional \$60,000 to the Countywide HHW Program during Fiscal Year 2019-2020 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C-1, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

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2. Attachment C-1 "HHW Schedule For Collection Events for Fiscal Year 2019/2020" attached hereto and incorporated herein by this reference is hereby added to the AGREEMENT.

Except as provided herein, all terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY, through their duly authorized representatives, have entered into this First Amendment to the AGREEMENT on the last date shown below:

COUNTY OF SANTA CLARA

Signature: _____

Sylvia Gallegos
Deputy County Executive

Date: _____

CITY OF MORGAN HILL

Signature: _____

Name: Christina Turner
Title: City Manager

Date: 6/27/19

APPROVED AS TO FORM AND LEGALITY

Michael Rossi
Lead Deputy County Counsel

Date: _____

APPROVED AS TO FORM:

Cynthia Hasson, Assistant City Attorney

Attachment: Executed First Amendment [Revision 1] (2735 : 2nd HHW Amend 2020)

ATTACHMENT C - 1

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2019/2020

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Thurs,Fri,Sat	4,5,6	No Event	No Event	4th OF JULY WEEK
	Fri,Sat	12,13	San Martin	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
August	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Saturday	10	Mountain View	Temporary	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	San Jose	Permanent	
	Thurs, Fri	29,30	San Jose	Permanent	
	Saturday	31	No Event	No Event	LABOR DAY WEEKEND
September	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Fri,Sat	6,7	West Valley	Temporary	TBD
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
	Saturday	28	Santa Clara	Temporary	
October	Fri,Sat	4,5	San Martin	Permanent	
	Saturday	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	Permanent	
	Thurs,Fri,Sat	17,18,19	San Jose	Permanent	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
November	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs,Fri,Sat	28,29,30	No Event	No Event	THANKSGIVING
December	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	No Event	No Event	CHRISTMAS
2020/Jan	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	San Jose	
	Thurs,Fri,Sat	16,17,18	San Jose	San Jose	
	Saturday	18	Sunnyvale	Temporary	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	

HHW SCHEDULE FOR COLLECTION EVENTS FOR FISCAL YEAR 2019/2020 **-continued**

2020/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
February	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
March	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
April	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Los Altos	Temporary	TBD
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Saturday	18	Sunnyvale	Temporary	TBD
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
	Saturday	25	Santa Clara	Temporary	
May	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	30,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri	21,22	San Jose	Permanent	
	Saturday	23	No Event	No Event	MEMORIAL DAY WEEKEND
	Thurs,Fri,Sat	28,29,30	San Jose	Permanent	
June	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Milpitas	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	

*SUBJECT TO CHANGE

Rev. 4/24/19

Attachment: Executed First Amendment [Revision 1] (2735 : 2nd HHW Amend 2020)

127-04-18-025

AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM

This Agreement is made by and between the City of Morgan Hill (CITY) and the County of Santa Clara (COUNTY) on the 19th day of June, 2018.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring HHW to any Household Hazardous Waste Collection Event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.60 in FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021) on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected from any location within the county by a solid waste hauler operating

pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose, CA 95133.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

The projected AB939 HHW Implementation Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A, attached hereto and incorporated herein.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose. Estimated San Jose Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs are allocated on a per household basis and San Jose Facility Use Surcharge is allocated on a participation basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of locally produced materials; and,
- Conducting and supporting outreach and publicity to attain the 4% goal of household participation.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ♦ *San Martin, 13055 Murphy Avenue, San Martin*
- ♦ *San Jose, 1608 Las Plumas, San Jose*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. This program may, at the sole discretion of CITY, be subsidized by participating jurisdictions using outside funding not associated with AB939 HHW Fee. For purposes of definition, CESQG as defined is equivalent to Very Small Quantity Generator (VSQG) in 40 CFR 262.14.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

B) NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization as established in Public Resources Code Section 41904, is a nonprofit as defined in Section 501(c) (3) of the United States Internal Revenue Code, or a distinct operating unit or

division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218, as amended from time to time, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ 54,700 to the Countywide HHW Program during Fiscal Year 2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2019 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this agreement, COUNTY may seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, retail take-back collection and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants and the Oil Payment Program, from the California Department of Resources Recycling and Recovery (CalRecycle). The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion.

Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, County Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15, 2019. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or

arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of <u>Morgan Hill</u>	City Representative	<u>Christina Turner</u>
	Representative's Title	<u>City Manager</u>
	City Address	<u>City of Morgan Hill</u>
		<u>17525 Peak Ave.</u>
		<u>Morgan Hill, CA 95037</u>

Santa Clara County

Director
Consumer and Environmental Protection Agency
1553 Berger Drive
San Jose, CA 95112

34. CONTRACT EXECUTION

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

Attachments:

- A Projected Fiscal Years 2019, 2020, and 2021 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021
- C HHW Schedule of Collection Events for Fiscal Year 2019
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR
COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION
PROGRAM on the dates as stated below:

“COUNTY”



S. Joseph Simitian, President
Board of Supervisors

Date: JUN 19 2018

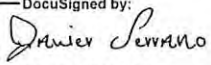
Signed and Certified that a copy of this document
has been delivered by electronic or other means to
the President, Board of Supervisors.

ATTEST:



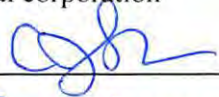
JUN 19 2018
MEGAN DOYLE Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
 4/23/2018
16FE0EECFBF74C6...
Javier Serrano Date
Deputy County Counsel

“CITY”

CITY/TOWN OF Morgan Hill,
A municipal corporation

By: 

Title: City Manager

Date: 6/8/18

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

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Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Attachment A: Projected Fiscal Years 2019-2021 Annual HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$2.99 per HH	SJ Facility \$6.83 Surcharge	Variable Cost \$62 per Car	Abandoned Waste Disposal Cost \$0.05 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	17,832	713.28	38,979.51	\$ 101,346.73	\$ 53,317.68	\$ 6,718.88	\$ 44,223.36	\$ 891.60	\$ (3,804.80)	\$ 26,104.34	1,073	98
Cupertino	21,064	842.56	44,875.46	\$ 116,676.20	\$ 62,981.36	\$ 3,06.12	\$ 3,720.00	\$ 1,053.20	\$ 48,615.52	\$	60	4
Gilroy	16,258	650.32	49,766.41	\$ 129,392.67	\$ 48,611.42	\$ 1,075.34	\$ 40,319.84	\$ 812.90	\$ 38,573.17	\$ 15,294.16	897	151
Los Altos	11,660	466.40	18,006.34	\$ 46,816.48	\$ 34,863.40	\$ 4,937.12	\$ 28,916.80	\$ 583.00	\$ (22,483.84)	\$ 70,143.24	1,235	72
Los Altos Hills	3,108	124.32	3,164.89	\$ 8,228.71	\$ 9,292.92	\$ 871.26	\$ 7,707.84	\$ 155.40	\$ (9,798.70)	\$ 15,780.46	221	121
Los Gatos	13,289	531.56	25,570.37	\$ 66,482.96	\$ 39,734.11	\$ 7,974.75	\$ 32,956.72	\$ 664.45	\$ (14,847.07)	\$ 57,896.15	1,226	1,161
Milpitas	21,532	861.28	74,523.39	\$ 193,760.81	\$ 64,380.68	\$ 3,987.38	\$ 53,399.36	\$ 1,076.60	\$ 70,916.80	\$ 5,351.84	948	58
Monte Sereno	1,311	52.44	1,207.90	\$ 3,140.54	\$ 3,919.89	\$ 957.60	\$ 3,251.28	\$ 65.55	\$ (5,053.78)	\$ 11,285.40	153	141
Morgan Hill	14,415	576.60	51,502.27	\$ 133,905.90	\$ 43,100.85	\$ 1,875.95	\$ 35,749.20	\$ 720.75	\$ 52,459.15	\$ 54,639.20	1,458	27
Mountain View	35,595	1,423.80	54,389.71	\$ 141,413.25	\$ 106,429.05	\$ 5,572.91	\$ 88,275.60	\$ 1,779.75	\$ (60,644.06)	\$ 73,899.66	1,638	81
Palo Alto	29,124	0.00	43,478.06	\$ 113,042.96				\$ 1,456.20	\$ 111,586.76			
San Jose	332,574	13,302.96	683,263.56	\$ 1,776,485.26	\$ 994,396.26	\$ 116,026.35	\$ 824,783.52	\$ 16,628.70	\$ (175,349.57)	\$ 436,037.25	17,508	16,99
Santa Clara	46,535	1,861.40	166,527.00	\$ 432,970.20	\$ 139,139.65	\$ 1,062.63	\$ 115,406.80	\$ 2,326.75	\$ 166,034.37	\$ 82,450.70	3,191	1,47
Saratoga	11,226	449.04	19,744.70	\$ 51,336.22	\$ 33,565.74	\$ 5,439.47	\$ 27,840.48	\$ 561.30	\$ (16,070.77)	\$ 42,275.69	872	79
Sunnyvale	58,308	2,332.32	110,483.61	\$ 287,257.39	\$ 174,340.92	\$ 6,687.49	\$ 144,603.84	\$ 2,915.40	\$ (41,290.26)	\$ 63,029.32	2,683	981
Unincorporated	18,538	741.52	42,334.16	\$ 110,068.82	\$ 55,428.62	\$ 2,417.34	\$ 45,974.24	\$ 926.90	\$ 5,321.51	\$ 29.76	742	35
Total	652,369	24,929.80	1,427,817.34	\$ 3,712,325.08	\$ 1,863,502.55	\$ 174,910.78	\$ 1,497,128.88	\$ 32,618.45	\$ 144,164.42	\$ 954,237.18	33,904	25,62

Notes: No of HH based on 1/1/17 estimates. Disposal tonnage is based on FY2016-2017 actual. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2016-2017 actual participation.

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Attachment B: Estimated Annual HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021

FIXED COST		
Staff Salary and Benefits	.5 HMPM, Sr. HMS, 3 HMTs, Acct II, Sr MA, AMA, .8 OSIII,	\$1,210,647
County Admin Overhead		\$242,129
County Counsel		\$13,000
Phones and Communications		\$10,100
Facilities Lease Costs	San Jose	\$174,911
Vehicle Costs		\$32,500
Office Supplies and postage		\$1,825
Maintenance, Software		\$27,000
HHW Hotline		\$38,500
Garbage & Utilities		\$34,750
Membership & Dues		\$10,000
Training & Conference		\$4,600
Safety Wear		\$11,000
Printing		\$5,800
Other Services & Supplies		\$46,500
ESTIMATED ANNUAL TOTAL		\$1,863,262

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2018-2019***

2018/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Saturday	21	Sunnyvale	Temporary	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
August	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Mountain View	Temporary	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
September	Thurs,Fri,Sat	30,31,1	No Event	No Event	LABOR DAY WEEKEND
	Fri,Sat	7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
October	Saturday	29	Santa Clara	Temporary	
	Fri,Sat	5,6	San Martin	Permanent	
	Saturday	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
November	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	No Event	No Event	THANKSGIVING
December	Fri,Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	No Event	No Event	

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION
EVENTS FOR FISCAL YEAR 2018-2019 (Continued)**

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri,Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	San Jose	
	Thurs,Fri,Sat	17,18,19	San Jose	San Jose	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
February	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
March	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	28,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs	28	San Jose	Permanent	
	Fri & Sat	29 & 30	No Event	No Event	
					Caser Chavez Day
April	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Saturday	TBD	Los Altos	Temporary	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Saturday	27	Santa Clara	Temporary	
May	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri	23,24	San Jose	Permanent	
	Saturday	27	No Event	No Event	MEMORIAL DAY WEEKEND
June	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Saturday	22	Milpitas	Temporary	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	

*SUBJECT TO CHANGE

11/16/2017

ATTACHMENT D: COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. Purpose

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a

centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2D (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
- 4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

Attachment: Executed Morgan Hill HHW Agreement FY19-21 [Revision 2] (2735 : 2nd HHW Amend 2020)

Rev. 09/2016

AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM

Page 26 of 26



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Chris Ghione, Public Services Director
APPROVED BY: City Manager

APPROVE SIXTH AMENDMENT TO THE CENTENNIAL RECREATION CENTER (CRC) PARTNERSHIP AGREEMENT WITH THE YMCA OF SILICON VALLEY

RECOMMENDATION(S)

Authorize the City Manager to execute a sixth amendment to the Centennial Recreation Center Operating Agreement with the YMCA of Silicon Valley.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

The Covid-19 crisis and resulting shelter-in-place orders for the State of California and Santa Clara County have required significant changes in the overall City operations, including the closure of all the City owned recreation facilities. The City partners with the YMCA of Silicon Valley for operations of the Centennial Recreation Center. On March 17, the closure of the facility effectively reduced operations to providing minimal staffing for maintenance of the facility, support for the pickup of senior lunches and the CRC virtual membership. This closure resulted in furlough of most staff currently working at the facility for both the YMCA and City.

The City and YMCA have shared in a risk/reward scenario based on both expenses and revenues associated with operating the CRC. With the closure, both the revenues and expenses have gone to almost zero. City and YMCA staff agree that the closure of the facility and associated loss of revenue and expenses was not anticipated by the City or the YMCA during the development of the partnership agreement and believe the process of determining the ultimate risk/reward payment component is unclear. Additionally, developing a budget scenario for the next fiscal year with a risk/reward component is not feasible without understanding the future of the Covid-19 crisis and current and future shelter-in-place orders.

For the reasons outlined in this report, staff is recommending approval of an amendment to the agreement eliminating the risk/reward component for the current year and FY 2020-21, which is the final year of the agreement. The amendment will result in the City paying the YMCA only for expenses incurred in operating the CRC. The

amendment also requires the City and YMCA to review and update the partnership budget prior to December 31, 2020 based on known conditions relating to Covid-19.

The YMCA of Silicon Valley has been a long-standing partner with the City of Morgan Hill and is experiencing the same financial difficulties as the City, and the Mt. Madonna YMCA serving the South County has been significantly impacted. This amendment will support the ongoing partnership of the City and YMCA during these difficult times. The City and YMCA are working towards the next phase of the partnership as the agreement is set to expire in June 2021.

COMMUNITY ENGAGEMENT: Not Applicable

No community engagement has occurred for this item, as the amendment was negotiated between the City and YMCA staff.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve this amendment. This will likely result in prolonged legal review in determining responsibility relating to the risk/reward component of the agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the original agreement with the YMCA for operating the CRC in 2006. The Council has approved amending the agreement five times previously, including two 5-year extensions on the term of the agreement.

FISCAL AND RESOURCE IMPACT:

It is estimated that YMCA expenses will total \$1,290,000 for FY 2019-20, approximately \$430,000 below the budget. It is estimated that CRC membership revenue for FY 2019-20 will total \$3,550,000, approximately \$1,210,000 below budget. Under the proposed amendment there will be no risk/reward payment associated with this revenue and expense. For FY2020-21, the amendment would provide for the City to fund the YMCA costs in operating the CRC, which will be determined through the budget process.

CEQA (California Environmental Quality Act):

Not a Project

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

LINKS/ATTACHMENTS:

1. CRC 6th Amendment Signed

**SIXTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This SIXTH AMENDMENT TO AGREEMENT is made this _____ day of _____, 20____, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the Centennial Recreation Center and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment").

WHEREAS, CITY and YMCA entered into the Fourth Amendment to the Original Agreement on September 21, 2016 ("Fourth Amendment").

WHEREAS, CITY and YMCA entered into the Fifth Amendment to the Original Agreement on December 22, 2016 ("Fifth Amendment") and a Side Letter on March 8, 2018. The Original Agreement, First Addendum, Second Addendum, Third Amendment, Fourth Amendment, Fifth Amendment and Side Letter are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, due to the March 16, 2020 Santa Clara County Public Health Department Order to shelter in place, the Centennial Recreation Center has been generally closed to the public.

WHEREAS, closure of the facility and associated loss of revenue was not anticipated by the City or the YMCA at the time it entered into the Original Agreement or Amendments.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Paragraph 5.3 shall be amended and replaced in its entirety by the following:

The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including but not limited to a significant unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled. For Fiscal Year 2020/21 the City and YMCA agree to update the CRC budget based on known conditions by December 31, 2020.

2. Paragraph 5.5 shall be amended and replaced in its entirety by the following:

As part of the annual budget and work plan adoption process the parties will agree on a method for separately accounting for fee based activities health and fitness, aquatics facility operations and non-fee based activities. For Fiscal Year 2019/20 and Fiscal Year 2020/21 no payments shall be made by either party in relation to net operating gain or loss.

3. Paragraph 13.2 is amended and replaced per the March 8, 2018 Side Letter in its entirety by the following:

The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

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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/Deputy City Clerk_____
Michelle Bigelow_____
Print Name_____
Date:

APPROVED AS TO FORM:

City Attorney_____
Donald Larkin_____
Print Name_____
Date:_____
City Manager_____
Christina Turner_____
Print Name_____
Date:

YMCA of Silicon Valley

*Sandra B. Walker*By: *Sandra B. Walker*Title: *President / CEO*_____
Print Name and Title of Signer.

If Corporate: Chairman,

President or Vice President

Date: *May 12, 2020*_____
*Karla Jessup*By: *Karla Jessup*Title: *Chief Human Resources Officer*_____
Print Name and Title of Signer.

If Corporate: Secretary,

Assistant Secretary, Chief

Financial Officer or Assistant

Treasurer

Date: *May 12, 2020*

Attachment: CRC 6th Amendment Signed [Revision 2] (2738 : CRC Partnership Agreement Sixth Amendment)

126-04-06-003



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

March 8, 2018

YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051

Re: Side Letter to the Centennial Recreation Center Operating Agreement

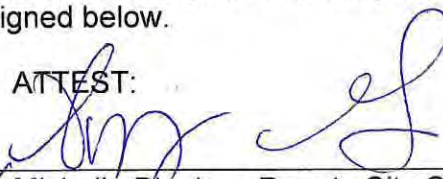
This is a Side Letter to that Operating Agreement, including all amendments thereto (hereinafter "Agreement"), initially entered into on June 29, 2006, between the City of Morgan Hill and YMCA of Silicon Valley (collectively, referred to as "the Parties") for operation of the Centennial Recreation Center. The Parties, without waiving any rights set forth in the Agreement, agree to delete the drug testing requirement by removing it from section 13.2 to read as follows:

13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis, ~~drug screen~~ and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

This Side Letter shall expire on June 30, 2021, concurrently with the expiration of the Agreement. Should the parties amend the Agreement prior to its expiration date, this Side Letter shall terminate, and the change to section 13.2 shall be incorporated into the amendment if appropriate.

This Side Letter is not intended to and does not confer any rights or obligations on either party, and all terms and conditions of the Agreement, as amended, shall remain in full force and effect except as expressly set forth above. The Side Letter is effective upon the last date signed below.

ATTEST:

for 
Michelle Bigelow, Deputy City Clerk

Date: 4/12/18

CITY OF MORGAN HILL


Christina J. Turner, City Manager

Date: 4/10/18

APPROVED AS TO FORM:

for 
Donald A. Larkin, City Attorney

Date: 4-5-18

[Signatures Continued on Next Page]

Attachment: CRC 6th Amendment Signed [Revision 2] (2738 : CRC Partnership Agreement Sixth Amendment)

On behalf of YMCA of Silicon Valley, I consent to the above.

YMCA of Silicon Valley

Sandra B Walker

Title: Sandra Berlin Walker, President/CEO
Print Name and Title of Signer.

Date: March 14, 2018

**FIFTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This FIFTH AMENDMENT TO AGREEMENT is made this 22 day of December 2016, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the CRC and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment").

WHEREAS, CITY and YMCA entered into the Fourth Amendment to the Original Agreement on September 21, 2016 ("Fourth Amendment"). The Original Agreement, First Addendum, Second Addendum, Third Amendment and Fourth Amendment are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Section 18 shall be amended and replaced in its entirety by the following:

"18. Membership Reciprocity

18.1. Effective January 1, 2017, the CRC will no longer sell YMCA Silicon Valley ("YSV") memberships. Also effective January 1, 2017, CRC memberships will include the benefit of allowing CRC members access to all YSV locations and all YMCAs that have entered into a reciprocity agreement with the YSV ("Reciprocal YMCAs"). In exchange for this benefit, the City shall allow YMCA members who purchase memberships at YSV and Reciprocal YMCA locations to access the CRC at no additional charge. Use of the City's Aquatics Center is not included as part of reciprocal use.

18.2 The Parties agree that the membership reciprocity arrangement as outlined in Section 18 assumes equal use of YMCA facilities by CRC members and vice versa. Should use patterns indicate greater use of the CRC by YMCA members than CRC member use of YMCA facilities, the YMCA shall pay the City for each net member use (calculated as YMCA member uses of the CRC minus CRC member uses of the YMCA facilities) at the current inter-branch Day Pass rate of five dollars (\$5.00) per unit per visit. Conversely, the City will not pay the YMCA should use patterns indicate greater use of YMCA facilities by CRC members than YMCA member use of the CRC. Additionally, any YMCA member who regularly uses the CRC more than ten times per month *and* more than his or her home YMCA will be asked to transfer membership to the CRC. Any CRC member regularly using a specific YMCA more than ten times per month *and* more than the CRC will be asked to transfer membership to the YMCA. All reciprocal use of the CRC and YSV locations and Reciprocal YMCAs will be tracked by the YMCA. The YMCA will share use numbers with the City by the tenth day of each month. Payments (if applicable) to the City shall be made biannually.

18.3 CRC staff may set limits on attendance or restrict use of the CRC facility or programs for YMCA members in order to provide CRC members with priority use. YMCA staff may set limits on attendance or restrict use of YSV or Reciprocal YMCA facilities or programs for CRC members in order to provide YMCA members with priority use.

18.4 Both parties will monitor use and meet to evaluate and/or modify the terms of this reciprocity arrangement by June 30, 2017. Any modifications to this Section 18 shall be in writing signed by both parties. Notwithstanding Section 11 of this Agreement, both parties have the ability to terminate the membership reciprocity provisions and all terms outlined in this Section 18 by providing written notice to the other party ninety (90) days ahead of the intended termination date.

SIGNATURES ON THE FOLLOWING PAGE

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

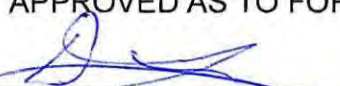
ATTEST:


 City Clerk/Deputy City Clerk

 for
 Michelle Wilson
 Print Name

Date: 12/22/16

APPROVED AS TO FORM:


 City Attorney

 Donald Larkin
 Print Name

Date: 12/20/2016

CITY OF MORGAN HILL


 City Manager

 for
 Steve Rymer
 Print Name

Date: 12/22/16

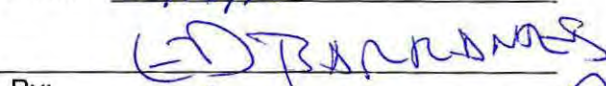
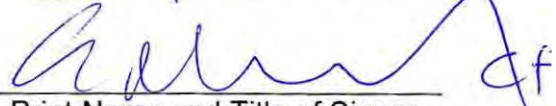
YMCA of Silicon Valley

By:

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

Date: 12/16/16

By:


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

Date: 12/19/2016

126-04-06-003

**FOURTH AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT**

This FOURTH AMENDMENT TO AGREEMENT is made this 21st day of September 2016, by THE CITY OF MORGAN HILL, a municipal corporation ("CITY"), and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA believe that membership reciprocity between the Centennial Recreation Center and the branches of YMCA will provide an equal benefit to Morgan Hill residents who are members of the CRC desiring to use other YMCA branch facilities and YMCA members desiring to use the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010 ("First Addendum").

WHEREAS, CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015 ("Second Addendum").

WHEREAS, CITY and YMCA entered into the Third Amendment to the Original Agreement on April 4, 2016 ("Third Amendment"). The Original Agreement, First Addendum, Second Addendum, and Third Amendment are attached collectively hereto as **Exhibit A** and are incorporated herein by this reference.

WHEREAS, CITY and YMCA desire to make further modifications to the Original Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Amendments: All terms and conditions of the Original Agreement, as amended, as attached as Exhibit A, shall remain in full force and effect; except that the following amendments shall be made as set forth below:

1. Section 18 shall be added to the Agreement to read in its entirety:

"18. Membership Reciprocity

18.1. Effective June 1, 2016, the CRC will sell YMCA Silicon Valley ("YSV") Memberships, which shall allow CRC members access to all other YMCA of the Silicon Valley locations. The City shall retain all monthly membership revenue and processing fees associated with the sale of YSV Memberships at the CRC.

In exchange for this revenue, the City shall allow YSV Members who purchase YSV Membership at YSV branch locations to access the CRC at no additional charge.

18.2 Effective June 1, 2016, other YSV branch locations shall be allowed to sell a Morgan Hill Aquatics Center Membership to members who possess a YSV Membership. This additional membership shall provide YSV Members access to the Morgan Hill Aquatics Center at no additional charge. The YMCA will retain ten percent (10%) of the monthly membership revenue for Morgan Hill Aquatics Center Memberships to cover administrative costs and shall pay the City the remaining ninety percent (90%) of revenue. Payments shall be made on a monthly basis.

18.3 CRC Members will be allowed to access YMCA locations for a reduced day fee rate. Likewise, members of other individual YSV Branch locations will be able to access the CRC (not the Aquatics Center) for the same reduced day fee rate.

18.4 The Parties agree to meet to evaluate the sale and use of YSV Memberships prior to January 31, 2017 and again prior to June 30, 2017. This arrangement assumes fairly equal use of other YMCA facilities by CRC members and vice versa. Should use patterns indicate a net difference in use greater than twenty five percent (25%) over the twelve (12) month period (YSV member use minus CRC YSV member use, divided by the lesser of the two), the Parties agree to amend this Agreement to adjust payments or use to more appropriately compensate for member use patterns.

18.5 The initial rates at the CRC for YSV memberships and day fees for YSV branch members shall be:

	Enrollment Fee	CRC Member Monthly Rates (Resident/ Non-Resident)	YSV Enrollment Fee	YSV Add-On Monthly Rates (Resident/ Non-Resident)
Adult Membership	\$50	\$63/\$67	\$55	\$27/\$23
Adult YSV Upgrade (no kids)			\$40	\$12/\$8
Adult Senior YSV Upgrade			\$40	\$7/\$3
Family Membership	\$75	\$90/\$96	\$75	\$38/\$32
Family YSV Upgrade (no kids)			\$60	\$23/\$17
Adult Plus	\$0	\$46/\$50	\$90 (Must upgrade family membership to YSV 3 adults membership)	\$30/\$20
Couple Senior / Special Hours	\$75	\$72/\$78	Must upgrade to adult, family or YSV senior membership.	
Senior / Special Hours	\$50	\$43/\$47	Must upgrade to adult, family or YSV senior membership.	
Senior YSV Upgrade (not special hours)			\$40	\$27/\$23
Youth/Teen	\$50	\$28/\$32	\$0	\$12/\$8
Core Class	\$0	FREE		
Specialty Class	\$0	Member Fee/Member Fee +\$10		
Swim Lessons	\$0	Member Fee/Member Fee + \$10		
Daily CRC Member Use at other YSV Locations		\$5 per visit per membership		
Daily YSV Member Use at CRC		\$5 per visit per membership		
YSV Aquatics Center Membership Add-On				\$25 (one member, any age), \$50 (2 or more members, any age)

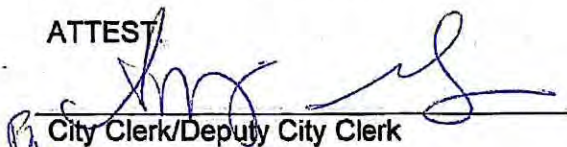
18.6 The Parties agree that adjustment to fees outlined in Section 18.5 may be necessary to maintain consistency between CRC fees and YMCA fees for YSV membership. The City Manager has authority to adjust fees outlined in Section 18.5. This authority does not include other general CRC fees for membership and daily rates, which must be approved by the City Council.

18.7 Both Parties have the ability to terminate membership reciprocity and all terms outlined in Section 18 of this Agreement by providing written notice to the other Party ninety (90) days ahead of the intended termination date.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:


 City Clerk/Deputy City Clerk

Michelle Wilson

Print Name

Date: 9/22/16

APPROVED AS TO FORM:

for 
 Interim City Attorney

~~Gary M. Baum~~ Donald A. Larkin
 Print Name

Date: 09/20/16

Resolution No. 16-089

CITY OF MORGAN HILL

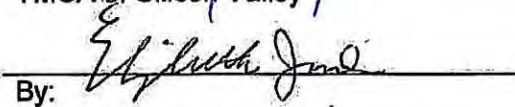

 City Manager

Steve Rymer

Print Name

Date: 9/21/16

YMCA of Silicon Valley

By: 

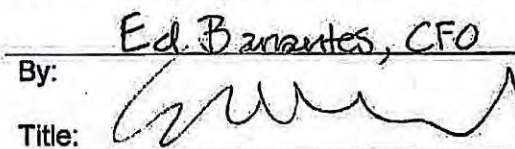
Title:

Elizabeth Jordan, COO

Print Name and Title of Signer.

If Corporate: Chairman,
President or Vice President

Date: 9/2/16

By: 

Title:

Ed. Barantes, CFO

Print Name and Title of Signer.

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

Date: 9/16/16

Exhibit A

126-04-00-003

**THIRD AMENDMENT TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This THIRD AMENDMENT TO AGREEMENT is made this 4th day of April, 2011, by THE CITY OF MORGAN HILL a municipal corporation ("CITY") and YMCA OF SILICON VALLEY, formerly known as YMCA of Santa Clara Valley, a California Non-Profit Corporation ("YMCA"), for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, CITY and YMCA entered into the Original Community Recreation Center Operating Agreement ("Original Agreement") made as of June 29, 2006 for operating the CRC.

WHEREAS, CITY and YMCA entered into the First Addendum to the Original Agreement on October 5, 2010. CITY and YMCA entered into the Second Addendum to the Original Agreement on December 23, 2015.

WHEREAS, the Original Agreement and the amendments made by the First and Second Addendums thereto are hereinafter collectively referred to as the "Agreement" and are attached hereto as Exhibit A.

WHEREAS, Section 2.3 of the Agreement provides for two (2) five (5) year extensions by written mutual agreement and the parties have agreed to the first extension of the terms of the Agreement. Additionally, the Agreement provides for extensions beyond these first two (2) five (5) year extensions based upon mutual agreement.

WHEREAS, CITY and YMCA desire to extend the term of the Agreement for an additional five (5) years and make other modifications to the Agreement.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. The Agreement shall be amended to reflect the new address of the YMCA of Silicon Valley so that Paragraph 1 shall be amended and replaced in its entirety by the following:

"1. Parties to the Agreement.

City is the City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Silicon Valley, 80 Saratoga Avenue, Santa Clara, California 95051, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Phone: 408-351-6413
Fax: 408-298-0143"

2. The term of the Agreement shall be extended to June 30, 2021 so that Paragraph 2.1 of the Agreement shall be amended and replaced in its entirety by the following:

"2.1 The term of this Agreement shall terminate June 30, 2021 unless earlier terminated by either party as provided in Section 2 or extended as provided in Section 2.3."
3. Paragraph 3.2 sub section e. of the Agreement shall be amended and replaced in its entirety by the following:

"e. Reporting on status of operations at the CRC as requested."
4. Paragraph 3.6 of the Agreement shall be amended and replaced in its entirety by the following:

"3.6 The City Community Services Director and the YMCA Chief Operating Officer shall meet periodically to evaluate CRC operations. Reports shall be provided annually to the City Council and the Board of Directors of the YMCA of Silicon Valley on member satisfaction data and data on the financial performance of the CRC. The Director and Chief Operating Officer may involve other City and YMCA staff in development of the annual report as desired."
5. Paragraph 5.1 sub section c. of the Agreement shall be amended and replaced in its entirety by the following:

"c. The proposed annual budget and work plan will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6."

6. Paragraph 5.2 of the Agreement shall be amended and replaced in its entirety by the following:

"5.2 As part of the initial annual budget, the City shall pay YMCA an agreed upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC or other City facilities in support of the CRC membership. The first three payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15 and January 15. The final quarterly payment shall be made within 15 days following September 1 of each year. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan."

7. Paragraph 7 of the Agreement shall be amended and replaced in its entirety by the following:

"7. Integration with other Facilities.

The parties agree to discuss and consult on recreational and fitness programs offered to Morgan Hill residents including, but not limited to, teens and seniors at other City or YMCA owned or operated venues."

8. Paragraph 8.2 shall be removed from the Agreement.

9. Paragraph 9.2 of the Agreement shall be amended and replaced in its entirety by the following:

"9.2. Members of the CRC who signed up for membership prior to April 1, 2016 shall be allowed to utilize five other YMCA of Silicon Valley facilities until September 1, 2016. After September 1, 2016 access to other YMCA facilities shall not be included as a benefit of CRC membership. After April 1, 2016 no portion of processing fee paid by CRC members shall be credited to the YMCA of Silicon Valley."

10. Paragraph 14 of the Agreement shall be amended and replaced in its entirety by the following:

"14 Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail charges and postage prepaid

and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City notice shall be addressed as follows:

City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill CA 95037
Phone 408-779-7271
Fax 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill CA 95037
Phone 408-779-7271
Fax 408-779-3117

In the case of notices to be given to the YMCA notice shall be addressed as follows:

President and CEO, YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Phone: 408-351-6413
Fax: 408-298-0143

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section."

11. Exhibits A and B to the Agreement shall be replaced in their entirety by Revised Exhibits A and B to this Third Amendment.

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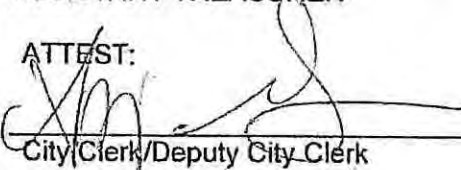
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12. All terms and conditions of the Agreement as amended as attached as Exhibit A shall remain in full force and effect.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:

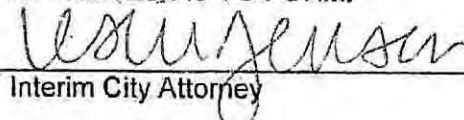

City Clerk/Deputy City Clerk

for Michelle Wilson

Print Name

Date: 4/28/16

APPROVED AS TO FORM:


Interim City Attorney

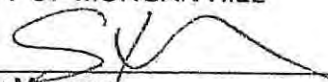
for Gary M. Baum

Print Name

Date: 04/25/16

Resolution NO. 16-017

CITY OF MORGAN HILL

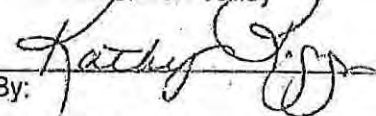

City Manager

Steve Rymer

Print Name

Date: 4/27/16

YMCA of Silicon Valley


By:

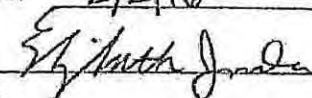
Title:

President and CEO

Print Name and Title of Signer.

If Corporate: Chairman,
President or Vice President

Date: 2/2/16


By:

Title:

Chief Operating Officer

Print Name and Title of Signer.

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

Date: 2/2/16

126-04-06-003

**SECOND ADDENDUM TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This SECOND ADDENDUM TO AGREEMENT is made this 23rd day of December, 2015, by THE CITY OF MORGAN HILL a municipal corporation CITY and YMCA OF SILICON VALLEY formerly known as YMCA of Santa Clara Valley a California Non Profit Corporation ("YMCA") for operation of the Centennial Recreation Center CRC located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS the CITY and YMCA entered into the Agreement made as of June 29, 2006 for operating the CRC.

WHEREAS the CITY and YMCA entered into the First Addendum to the Agreement on October 10, 2010.

WHEREAS the City and YMCA desire to extend the term of the Agreement, but need additional time to discuss details of the extension.

THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

All terms and conditions of the Agreement as amended as attached as Exhibit A shall remain in full force and effect except that Paragraph 2.3 of the agreement shall be amended to reflect a change of the extension deadline, which shall be extended to February 5, 2016, the new language for Paragraph 2.3 of the Agreement which is amended and replaced in its entirety by the following:

- "2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010, for the first extension, and no later than February 6, 2016, for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP."

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

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

ATTEST:

Deputy [Signature]
 City Clerk
 Date: 1/4/16

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 12/23/15

APPROVED AS TO FORM:

for [Signature]
 City Attorney
 Date: 12/23/15
 Council Approval:
12/16/15

YMCA OF SILICON VALLEY

[Signature]
 By: Kathy Riggs
 Title: President and CEO
 Date: 12/23/15

[Signature]
 By: Elizabeth Jordan
 Title: Chief Operating Officer
 Date: 12/22/15

126-04-06-003

Exhibit A

**FIRST ADDENDUM TO THE
CITY OF MORGAN HILL AND YMCA
COMMUNITY RECREATION CENTER OPERATING AGREEMENT ("AGREEMENT")**

This FIRST ADDENDUM TO AGREEMENT is made this 5th day of October, 2010, by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, YMCA OF SILICON VALLEY (formerly known as YMCA OF Santa Clara Valley), a California Non-Profit Corporation ("YMCA") for operation of the Centennial Recreation Center ("CRC") located at 171 West Edmundson Avenue, Morgan Hill, California.

WHEREAS, the CITY and YMCA entered into the Agreement made as of June 29, 2006, for operating the CRC

WHEREAS, Section 2.3 of the Agreement provides for two five-year extensions by written mutual agreement and the parties have agreed to the first extension of the terms of the Agreement.

THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

All terms and conditions of the Agreement, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the term of the Agreement shall be extended to June 30, 2016, so that Paragraph 2.1 of the Agreement shall be amended and replaced in its entirety by the following:

"2.1 The term of this Agreement shall terminate June 30, 2016, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3."

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:

Julie Drimakis, Deputy
City Clerk
Date: 5/16/2011

CITY OF MORGAN HILL

[Signature]
City Manager
Date: 5-13-11

APPROVED:

[Signature]
Risk Manager
Date: May 11, 2011

YMCA of Silicon Valley

[Signature]
By:
Title: Executive Vice President
Date: 10/05/10

APPROVED AS TO FORM:

[Signature]
City Attorney
Date: May 12, 2011
Council reso. 10/20/10

[Signature]
By:
Title: Chief Financial Officer
Date: 10/05/10

00418

**CITY OF MORGAN HILL
AND
YMCA
COMMUNITY RECREATION CENTER
OPERATING AGREEMENT**

This Agreement ("Agreement") is made this 29 day of JUNE, 2006 ("Effective Date"), by and between the City of Morgan Hill, a California general law city ("City"), and the YMCA of Santa Clara Valley, a California non-profit corporation ("YMCA") for operations of the Centennial Recreation Center ("CRC") located at 171 W Edmundson Avenue, Morgan Hill, California.

Recitals

- A. The City owns the newly constructed CRC, a 52,000 square foot community recreation center which includes a fitness room, gymnasium, an indoor swimming pool, a senior wing and a teen wing.
- B. The YMCA is experienced in operating health and fitness facilities and is interested in expanding its programs in the Morgan Hill area.
- C. The City currently operates an Outdoor Aquatics Center, a Community Cultural Center and certain recreational programs.
- D. The parties believe they can maximize the programs offered and better control the expenses of operating the CRC if the City, using City employees, provides aquatics and teen programming while the YMCA, using YMCA employees, provides health and fitness and senior services at the CRC.
- E. The City and YMCA desire to take advantage of the YMCA's experience in offering membership-based health and fitness programming while ensuring that the City remains responsible to the City Council and the residents of Morgan Hill for the CRC's operations including its financial performance.
- F. The parties desire to set forth the terms and conditions of their relationship in this Agreement with further details of the actual CRC operations to be set forth in a Center Operating Plan. The initial Center Operating Plan ("COP") is attached to this Agreement as Exhibit A; however it is intended that specific services provided by each party and the operating relationships may change over the course of this Agreement in order to meet community needs.
- G. The City and YMCA commit themselves to work together in the spirit of partnership for the success of the CRC, subject to the terms and conditions of this Agreement, and to deal with each other with fairness, respect, cooperation, and good faith in the operation of the CRC and performance of this Agreement. The City and YMCA commit to promptly resolve disputes over this Agreement and/or CRC operations.

NOW THEREFORE, the parties agree as follows.

Agreement

1. Parties to the Agreement.

City is the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Santa Clara Valley, 1922 The Alameda, 3rd Floor, San Jose, California 95126, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Santa Clara Valley
1922 The Alameda, 3rd Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

2. Term.

- 2.1 The term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2011, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3.
- 2.2 In addition to the provisions of Section 5.6 and 5.7 below, either party may request an early termination of this Agreement after June 30, 2009. Such a request must be made in writing, and must be made a minimum of six months in advance of proposed termination date, unless City and YMCA mutually agree to a lesser time. Provided that such written request is timely made, termination shall occur upon the specified termination date.
- 2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010, for the first extension, and December 31, 2015, for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP.

3. Management and Staffing.

- 3.1 City and YMCA agree to cooperatively manage and operate the CRC as a first class recreation center for the benefit of the public. A "Recreation Supervisor," or other classification as determined by the City, shall be employed by the City and responsible for all CRC operations. The initial COP is attached to this Agreement as Exhibit A and is incorporated into this Agreement by this reference. The COP, among other things, details staff duties and operating relationships. The parties hereby authorize the Morgan Hill City Manager ("City Manager") and YMCA of Santa Clara Valley CEO ("CEO") to modify in writing the COP from time to time as may be necessary to facilitate efficient operations of the CRC consistent with the intent of this Agreement.
- 3.2 The Recreation Supervisor shall be employed by the City. The City shall provide the YMCA with opportunities for meaningful and substantial input on the selection and ongoing performance of the Recreation Supervisor. The Recreation Supervisor shall have operational authority for the management and operation of the CRC. The duties and responsibilities of the Recreation Supervisor shall include, but not be limited to:
- a. Managing the CRC so that it is developed and maintained as a first class recreational center.
 - b. Preparing and administering the annual budget and work plan for development and operation of the CRC.
 - c. Preparing the annual progress report for the preceding fiscal year for approval by the City Council.
 - d. Organizing, scheduling, and directing YMCA and City employees assigned to the CRC.
 - e. Reporting on status of operations at the CRC as requested, including, but not limited to, providing a monthly report intended for the City Council and YMCA Board of Directors.
 - f. Performing all duties that are usual and customary and normally associated with the position of a recreation supervisor of a public recreation center.
- 3.3 Notwithstanding the parties' agreement to cooperatively manage and operate the CRC, City employees working at the CRC are employed solely by the City, and the City retains all responsibilities associated with their employment. YMCA employees working at the CRC are employed solely by the YMCA, and the YMCA retains all responsibilities associated with their employment. The parties agree to cooperate fully with each other in resolving any employment issues. The YMCA agrees to indemnify and hold the City, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC YMCA employee acting within the scope of employment. The City agrees

to indemnify and hold the YMCA, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC City employee acting within the scope of employment.

- 3.4 Performance issues on the part of the Recreation Supervisor may be raised by either party and addressed through the dispute resolution process provided for in Section 11.1 of this Agreement.
- 3.5 The CRC staff shall be comprised of employees of both the City and the YMCA. It is acknowledged and agreed between the parties that to achieve the optimum performance of the total CRC staff, City employees may be directed to work at the CRC on YMCA activities within the scope of this Agreement and YMCA employees may be directed to work at the CRC on City activities within the scope of this Agreement.
- 3.6 The City Recreation and Community Services Director and the YMCA Vice President of Operations shall meet periodically to evaluate CRC operations and shall prepare no later than December 31 of each year and present as soon as practicable thereafter an annual report on CRC operations to the City Council and the Board of Directors of the YMCA of Santa Clara Valley. The report shall include member satisfaction data as well as data on the financial performance of the CRC. The Director and Vice President may involve other City and YMCA staff in development of the annual report as desired.

4. Grounds and Facilities.

- 4.1 The City shall retain title to the grounds, buildings, structures and all other improvements, and its equipment. Subject to approval of the Recreation Supervisor, certain equipment owned by the YMCA may be used at the CRC; provided, however, any such equipment must be identified in a writing attached to the COP and the equipment must be clearly marked as YMCA property on the equipment itself.
- 4.2 The City and YMCA agree that both parties shall continue joint use of the grounds, buildings, equipment and other improvements at the CRC in furtherance of this Agreement. The Recreation Supervisor shall determine the most effective use of the CRC grounds, buildings, equipment and other improvements subject to the approval of the City's Director of Recreation and Community Services, or such other individual designated in writing by the City Manager, in consultation with the Vice President of Operations for the YMCA, or such other individual designated in writing by the YMCA CEO.

5. Budget and Funding.

- 5.1 The parties agree that it is the intent of the arrangement governed by this Agreement that revenues generated by CRC programs and activities will be sufficient to cover operating expenses (including, but not limited to, maintenance and contributions to any capital improvement reserves established in the budget) no later than fiscal year 2008/09. (For purposes of this Agreement, "fiscal year" shall mean the twelve consecutive months beginning July 1 of the year first referenced and ending June 30 of the year last referenced. For example, "fiscal year 2008/09" means the period beginning July 1, 2008 and ending June 30, 2009.)
- a. In February of each year, the Recreation Supervisor and the Executive Director of the Mount Madonna YMCA ("Executive Director") shall develop budget assumptions related to the CRC operating budget for the following fiscal year.
 - b. Before March 15, or on another mutually-agreed upon date, the Recreation Supervisor and Executive Director shall develop the preliminary proposed annual CRC operating budget and workplan. The budget will include estimated costs and revenue from health and fitness activities and senior services as well as agreed-upon capital improvement reserves. The YMCA may agree to the preliminary proposed CRC operating budget and workplan or terminate this Agreement subject to the notification provisions of section 5.6.
 - c. The proposed annual budget and work plan and the latest progress report will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6.
 - d. Once the annual budget and work plan is approved by the City Council, that annual budget and work plan shall be implemented by the Recreation Supervisor for the upcoming fiscal year.
- 5.2 As part of the initial annual budget, the City shall pay YMCA an agreed-upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC. All the agreed-upon services shall be provided at the CRC. The foregoing payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15, January 15 and April 15. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan.

- 5.3 The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including, but not limited to, a significant unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled.
- 5.4 The City shall provide YMCA with monthly reports on the operating position of the CRC. Both parties agree to maintain agreed-upon customer service standards and accessibility over the course of the year, while recognizing that operations may change over the year in order to meet financial objectives for CRC operations.
- 5.5 As part of the annual budget and work plan adoption process, the parties will agree on a method for separately accounting for fee-based activities (health and fitness, aquatics, facility operations) and non-fee-based activities (senior and teen centers). A budget worksheet for the initial year is attached as Exhibit B. A final annual budget reconciliation shall be prepared no later than October 1 of each year. Any net operating gain for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be distributed to the parties as follows: 60% to the City and 40% to the YMCA. Any net operating loss for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be paid by parties as follows: 60% from other City funds and 40% by transfer of funds from the YMCA to the City no later than thirty (30) days after receipt of the final budget reconciliation.
- 5.6 In the event that the YMCA does not agree to the annual budget and work plan as approved by the City Council, this Agreement shall terminate. The YMCA will notify the City in writing that this Agreement shall be terminated six months from the date of notification, or on another date as agreed-upon by the parties. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.
- 5.7 In the event that the YMCA objects to the candidate selected by the City for the position of Recreation Supervisor, either at the initial hire or in

future hiring actions, the YMCA may terminate this Agreement by giving the City six months advance written notice. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.

6. Programming and Pricing.

- 6.1 The City and YMCA will agree upon programming and pricing as part of the annual budget and work plan process. The initial programming and pricing is as described in the COP. The parties will agree on which existing recreational and fitness programming currently offered by the City or the Mt. Madonna YMCA, if any, will be moved to the CRC.
- 6.2 The parties acknowledge that the scope of community services offered at the CRC, including youth, family, intergenerational, special event, and adaptive programming, may evolve over time.
- 6.3 Initial program pricing and the pricing philosophy for the CRC are provided in Section 2 of the COP.
- 6.4 It is intended that the annual City Council approval of the budget and work plan will authorize the City Manager to adjust prices and programming as needed in accordance with a City Council adopted policy or directive.

7. Integration with other Facilities.

The parties agree to consult with each other prior to offering new recreational and fitness programs to Morgan Hill residents including, but not limited to, teens and seniors at other City or YMCA owned or operated venues.

8. Senior Services.

- 8.1 The parties agree that the YMCA will provide senior program services as defined in the COP at the CRC. The YMCA currently has a contract with the County of Santa Clara to provide a Senior Nutrition Site in Morgan Hill. It is anticipated that the YMCA will relocate the Senior Nutrition Site to the CRC. In developing the annual budget, as long as the County pays for the direct costs of the Senior Nutrition Site, there will be no charge to the City for these services. At any time that the County ceases paying the YMCA

for a Senior Nutrition Site at the CRC, inclusion of this service and the cost of providing it will be considered as part of the annual budget and work plan.

- 8.2 As part of the annual budget and work plan, the City will provide an annual stipend to the YMCA to subsidize the operation of the Senior Center core program. In Fiscal Year 06/07, this will be \$37,500. In the first full year of operation, Fiscal Year 07/08, this will increase to \$75,000. Increases in future years will be agreed upon by the parties as part of the annual budget and work plan process.

9. Revenues and Marketing.

- 9.1 The parties agree that Morgan Hill residents are intended to be the primary beneficiaries of the CRC, although the CRC will be available for the use of non-residents as well. To that end, the parties desire to develop a marketing plan and activity program pricing structure that will accomplish the foregoing goal and will provide adequate revenues to cover annual operating expenditures. The parties also intend to jointly and/or individually seek grants or other sources of funding which may be available to provide existing or expanded services and programs at the CRC. Both parties agree to cooperate fully, one with the other, in such endeavors. Implementation of this Section is addressed more fully in the COP.
- 9.2 Members of the CRC will be able to utilize other YMCA of Santa Clara Valley facilities. Half of the processing fee paid by members who chose this option will be credited to the YMCA of Santa Clara Valley.
- 9.3 The parties agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation, or ancestry, in any activity or membership offered pursuant to this Agreement.

10. Audits, Record Retention and Inspection.

- 10.1 The parties understand and agree that the City is a public entity and as such is subject to various laws including, but not limited to, the California Public Records Act, and as such members of the public as well as representatives of governmental agencies have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or other records of each party relating to this Agreement. Such material, including, but not limited to, all pertinent costs, accounting, and financial records shall be retained by each party for a period of at least five (5) years after their creation date.

- 10.2 Each party grants the other party, at the requesting party's expense, the right to conduct at any reasonable time an audit and re-audit of the books, records and business conducted related to this Agreement and observe the operation of the business so that the accuracy of the above records and any of the invoices for services provided can be confirmed.
- 10.3 In the event of any dispute between the parties as to financial matters, the parties agree, as their sole remedy, to mutually choose an independent auditor to conduct an investigation of the disputed matter. If the parties are unable to mutually choose an independent auditor, each party shall identify one auditor and those two auditors shall choose a third, independent auditor to conduct the investigation. The auditor so named shall be deemed to have been mutually chosen by the parties. If, as a result of the investigation of the mutually chosen auditor, any adjustment in payment is required by either party, such payment shall be made within sixty (60) days of receipt of written demand for same. The decision of the mutually chosen auditor shall be final and binding upon the parties.
- 10.4 If either party triggers the process set forth in section 10.3 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 10.3.

11. Dispute Resolution.

- 11.1 Operational Issues. Except as otherwise specifically set forth in this Agreement, any dispute concerning day to day operational decisions in the implementation of this Agreement as further detailed in the COP shall be resolved by the Recreation and Community Services Director and the Vice President of Operations of the YMCA. For any disputes which cannot be resolved by these individuals, either party may request that the Morgan Hill City Manager resolve the dispute after first consulting with the YMCA CEO. The decision of the City Manager shall be final.
- 11.2 Other Issues. Should other disputes arise between the parties for which a dispute resolution mechanism or remedy is not otherwise specifically set forth in this Agreement (such as, for example, in section 10.3), and the parties are unable to resolve such matters between themselves by negotiation after the complaining party has provided the other party written notice of the complaint and a reasonable opportunity to cure the problem, then such disputes shall be resolved in the courts of the County of Santa Clara in accordance with applicable law and procedure, including any claims procedures that may be required by law with respect to a general law city.

- 11.3 Termination Option. If either party seeks judicial redress of a dispute as set forth in section 11.2 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 11.2.

12 Indemnification.

- 12.1 The City agrees to indemnify, defend and hold harmless YMCA, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with City's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the City by any person pursuant to this Agreement. City's duty to indemnify YMCA shall survive the expiration or other termination of this Agreement.
- 12.2 YMCA agrees to indemnify, defend and hold harmless City, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with YMCA's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the YMCA by any person pursuant to this Agreement. YMCA's duty to indemnify City shall survive the expiration or other termination of this Agreement.

13. Insurance.

- 13.1 General Requirements. Without limiting YMCA's indemnification of City or limiting City's indemnification of YMCA, YMCA and City shall each provide and maintain at its own expense throughout the term of this Agreement the hereinafter listed programs of insurance covering its operations hereunder. Such insurance provided by YMCA and by City shall be provided by insurers satisfactory to City's Risk Manager and satisfactory to the YMCA's Risk Manager, respectively, and a certificate or other evidence of coverage and certified copies of additional insured endorsements satisfactory to City and YMCA, respectively, shall be delivered to the City's Risk Manager and to the YMCA's Risk Manager, respectively, before the effective date of this agreement. It is recognized

that City currently provides general liability, workers' compensation, and auto liability insurance coverage through a combination of self insurance, pooled coverage, and purchased excess insurance coverage. Such evidence of coverage shall specifically identify this Agreement and shall contain the express condition that City or YMCA, as applicable, is to be given at least thirty (30) days advance written notice of any modification or termination of any program of insurance. All such insurance provided by YMCA shall be primary to and not contributing with any other insurance maintained by City. With the exception of workers' compensation insurance, all such insurance provided by YMCA and by City shall name "City of Morgan Hill, its elected officials, officers, employees, agents and representatives" and "YMCA of Santa Clara Valley, its officers, employees, agents, and representatives," respectively, as additional insureds.

At all times during the term of this Agreement, YMCA and City shall provide and maintain the following forms and amounts of insurance:

- a. Liability. Comprehensive General Liability Insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises-operations, products/completed operations, independent contractors, advertising, contractual, broad form of property damage, and personal injury with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and an aggregate limit of not less than Four Million Dollars (\$4,000,000).
- b. Workers' Compensation. Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability.
- c. Comprehensive Automobile Liability. Endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than Two Million Dollars (\$2,000,000) per accident.
- d. Failure to Comply. Failure on the part of YMCA or City to procure or maintain required insurance shall constitute a material breach of contract upon which City or YMCA, respectively, may immediately terminate this Agreement. Notwithstanding this requirement, in the event that YMCA or City fails to procure or keep in effect at all times the insurance coverage required herein, City or YMCA, respectively, may in its discretion procure said insurance on behalf of YMCA or City, respectively, and charge YMCA or City, respectively, the full cost of the insurance and administrative costs.

- 13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided

at the CRC. This includes tuberculosis, drug screen and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

14. Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, charges and postage prepaid, and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City, notice shall be addressed as follows:

City Manager
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-3117

In the case of notices to be given to the YMCA, notice shall be addressed as follows:

President and CEO
YMCA of Santa Clara Valley
1922 The Alameda, Third Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section.

15. Amendments.

This Agreement shall only be amended by a writing signed by both parties after approval by the City Council and YMCA Board of Directors.

16. Appropriations.

The payment of any obligations of the City described in this Agreement is subject to the annual appropriation of funds for said payments by the City Council. This provision does not affect any obligation of the City for payment of funds attributable to a fiscal year for which an annual budget has been approved.

17. Miscellaneous Provisions.

- 17.1 Good Faith and Cooperation. The City and YMCA agree that it is in their mutual best interest and in the best interest of the public that the CRC be operated and managed as herein agreed and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.
- 17.2 Severability. If any provision of this Agreement, or the application of such provision to any party or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to such party or circumstance other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.
- 17.3 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to that state's conflict of laws principles.
- 17.4 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior to contemporaneous written or oral negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof.
- 17.5 Parties in Interest. Nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any party other than the YMCA and the City nor shall anything in this Agreement relieve or discharge the obligation or liability of any third party to any party to this Agreement nor shall any provision give any third party any right of subrogation or action over or against any party to this Agreement.
- 17.6 Waiver. Failure of either party to complain of any action, non-action or default of the other party shall not constitute a waiver of such party's rights hereunder with respect to such action, non-action or default. Waiver by the YMCA or City of any right or any default hereunder shall not constitute a waiver of any subsequent default of the same obligation or for any other default, past, present or future. No payment by a party, or acceptance by the other party, of a lesser amount than shall be due from one party to the

other shall be treated otherwise than as a payment on account. The acceptance by a party of a check for a lesser amount, with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and a party may accept such check without prejudice to any rights or remedies which it may have against the other party.

- 17.7 Construction. This Agreement has been negotiated by the parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and without strict construction in favor of or against any party.
- 17.8 No Assignment. This Agreement, nor any part of it nor any right or obligation arising from it shall be assigned without the express written consent of the parties.
- 17.9 Independent Contractor Status. The parties shall at all times be acting as independent contractors. This Agreement is not intended, and shall not be construed to create the relationship of agent, servant, employee, partner, joint venture or association as between the parties. The parties understand and agree that any of their personnel furnishing services to the CRC under this Agreement are employees solely of the party which hired such personnel for purposes of workers' compensation liability and for purposes of receiving all other types of employee benefits. The parties shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any personnel hired by them for injuries arising from or connected with services performed under this Agreement, and shall bear the sole responsibility and liability for furnishing all other employee benefits to any personnel hired by them.

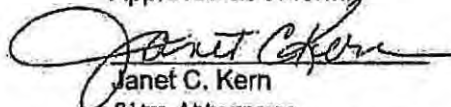
IN WITNESS WHEREOF, the YMCA and the City have executed this Agreement as of the day and year first above written.

YMCA

By: 
Name: DAVID G. THORNTON
Title: PRESIDENT & CEO

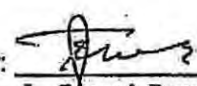
CITY OF MORGAN HILL

Approved as to form:


Janet C. Kern

City Attorney:

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By: 
J. Edward Tewes, City Manager

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EXHIBIT A

CENTENNIAL RECREATION CENTER OPERATING PLAN May 2006

1. Community Recreation Center Management.

- a. The City of Morgan Hill and the YMCA of Santa Clara Valley through the Mt. Madonna Branch will work together in the spirit of partnership to provide health and fitness and senior services to members and participants of the new Centennial Recreation Center. The YMCA will offer an agreed-upon range of programming and will involve the City in hiring, supervising and evaluating all staff that deliver these programs.

b. **Personnel**

It is recognized that all staff who work at the CRC are members of multiple work teams and are members of one CRC staff team. When staff are working they will be expected to work together as one, high performing team focusing on customer service, safety, communication, and cooperation.

All CRC staff will attend appropriate staff meetings as determined by the CRC Supervisor and Associate Supervisor. YMCA staff will be expected to attend selected YMCA trainings and staff meetings of the branch or Association. City staff will be expected to attend selected City trainings and meetings. When appropriate, CRC staff will have access to selected YMCA and City trainings.

To ensure a team environment, CRC staff will have many items in common:

- Identical staff uniforms with the partnership logo on the uniform and the organizational logo on staff name tags.
- Joint staff meetings.
- Identical payroll periods.
- Identical safety and risk management policies.
- Expectation to work as a team and support all other departments of the CRC.
- Responsibility to identify problems and provide solutions for the entire center.

The CRC Supervisor will be hired by the City and will be responsible for providing leadership for all CRC team members in an effort to deliver a large volume of high quality programs. The team will be comprised of three major departments:

- City staff hired by the CRC Supervisor.
- City staff hired by the Aquatics Supervisor.
- YMCA staff hired by the YMCA.

Success of the CRC Supervisor will be measured by:

- Creating one high performing CRC staff team from City CRC, YMCA CRC, and Aquatics Department CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center
- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

The CRC will have a Municipal Services Assistant who will provide support to supervisors, coordinators, and program directors.

The Associate CRC Supervisor for Health and Fitness will be hired by the YMCA and will supervise the Welcome Center Program Director, the Health and Fitness Program Director, and will be responsible for membership sales and all land based staff and fitness programming. Water based fitness classes will be supervised by the Aquatics Supervisor.

The Welcome Center Program Director is responsible for marketing the membership of the facility. This position will supervise the sales and service staff who work the Welcome Center. They will assure that people can join the facility at any time the facility is open, and will be responsible for all enrollment for any program at the facility. In addition it is hoped that the Welcome Center can also take enrollment for programs at other city facilities and the YMCA.

c. Reporting relationships.

	CRC City Staff	CRC Supervisor	CRC YMCA Staff
--	----------------	----------------	----------------

	CRC City Staff	CRC Supervisor	CRC YMCA Staff
Position	Recreation Coordinator (Teens), Recreation Coordinator (Aquatics), Municipal Services Assistant, Maintenance Specialist	CRC Supervisor	Associate CRC Supervisor for Health and Fitness, Wellness Center Director, Senior Program Director
Job Descriptions	City	City with YMCA input	YMCA with City input
Recruiting	City	City with YMCA input	YMCA with City input
Screening	City	City	YMCA of Santa Clara Valley
Decide finalists	City	City with YMCA input	YMCA with City input
Interviews	Regular process, possible YMCA involvement	Regular process with a visit to a YMCA and a near final interview with City and YMCA staff together	Regular process with City involvement
Decision	City	City decision with YMCA input	YMCA decision with City input
Reports to	CRC Supervisor	Recreation and Community Services Director	Mt Madonna YMCA Branch Executive
Employee Progressive Discipline	City with possible YMCA input	City with possible YMCA input	YMCA with possible City input
Performance Evaluation	CRC Supervisor with input from YMCA	Recreation and Community Services Director with input from YMCA	YMCA with input from CRC supervisor

d. Staff liaison:

The Mt. Madonna YMCA will provide a liaison to the CRC to:

- Meet weekly with CRC Supervisor to coordinate YMCA programming and services with the CRC
- Work with CRC Supervisor and Welcome Center Director on Marketing and enrollment strategies
- Provide supervision to Associate CRC Supervisor for Health and Fitness and Seniors Program Director to assure program quality and maximum enrollment

- Interface with the Santa Clara County Department of Aging
- Resolve any YMCA staff performance problems

- e. Capital expenditures.
Beginning in FY 07/08, the parties will develop a plan for future facility replacements. The replacement schedule will be developed during the budget process and funded as an annual operating expense for the CRC. The City will include the YMCA in the planning process, but will retain final decision-making authority on the facility replacement plan.

- f. **Facility maintenance.**
The CRC Supervisor will be responsible for managing facility maintenance in cooperation with the Building Division of the Community Development Department. The YMCA will be responsible for fitness equipment upkeep and maintenance. At all times, the CRC and its equipment will be maintained in a safe, clean, and operational manner. All CRC staff will be responsible to assist in keeping the facility clean as part of their daily duties. City staff and/or contractual crews will perform detailed, daily cleaning. A daily, monthly, quarterly, and annual cleaning plan will be developed to ensure the long-term integrity of the CRC.
- g. **Cash Handling/Accounting/Payables/Receivables/Collections.**
The CRC Supervisor will be responsible to ensure all cash handling, accounting, payables, receivables, and collections policies are adhered to by CRC staff. The City and YMCA will cooperatively determine which party can most effectively and efficiently perform these duties as part of the partnership. Detailed policies and procedures will be developed for all financial aspects of the CRC operations.
- h. **Membership policies.**
The City and YMCA will cooperatively develop membership policies that are intended to ensure community access, maximize revenue and comply with legal mandates. Existing YMCA policies may be modified to meet the CRC's operational needs. Both parties understand and agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation or ancestry.
- i. **Membership software.**
The City and YMCA will cooperatively determine which software package best meets the CRC's membership sales, tracking, and management needs. All appropriate CRC team members will be thoroughly trained to ensure that accurate and timely processing of information is achieved.
- j. **Operating hours: Estimated Days and Hours of Operation.**
The CRC will be open seven days per week except on major holidays; Easter, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas. The facility will be open according to the following daily schedule:

Monday through Friday	5am to 10pm
Saturday	6:30am to 8pm
Sunday	8am to 6pm

The City and YMCA may determine that it is in the best interest of the partnership and CRC members to adjust the operating schedule.

- k. Customer surveys and complaint resolution.
Customer surveys will be available at the Welcome Center at all times. The CRC Supervisor and Welcome Center Director will be responsible to track comments, provide recommendations for service improvements, and to ensure all complaints are handled in a professional and timely manner.
- l. Fundraising and scholarships.
The YMCA will raise funds as part of its Community Support Campaign to help support the senior nutrition program and to offer additional programs for teens involved in the CRC (Youth & Government, teen leadership or camp scholarships).

2. Programming and pricing.

a. Pricing Policy

- Member fees will be set to provide access to the health and fitness facility and maximize revenue
- The resident rate will apply to those who work or live in Morgan Hill.
- The standard rate will apply to those who do not live or work in Morgan Hill.
- Since membership is the income stream that will provide the best chance of cost recovery, pricing will be done to encourage membership
- Seniors and teens have specialized centers in the facility, and will not need to join in order to take advantage of the programs in these centers. If they wish to use the fitness facilities, they will need to join the CRC or purchase a day pass.

b. Pricing changes

The City Manager will be empowered by the City Council to adjust fees pursuant to Council policy.

- As expenses increase, prices will be adjusted to meet full cost recovery goals
- It is best to increase fees on an annual basis a small amount rather than have a larger amount after a longer time period of no fee increase
- Fee increases would be determined annually by taking into account 3 major items:
 - (1) Salary Increases
 - (2) Energy Costs
 - (3) CPI
- If it is determined that the current pricing structure relating to the daily fee is undermining the cost recovery goal, the City Council will make a decision to revise the fee or the goal.

c. Main Membership Categories

- Adult: Includes one adult and all children under the age of 18 living at the same address. Access all hours, all core programs, and Fitlinxx
- Family: Two adults and all children under the age of 18 living at the same address. Access all hours, all core programs and Fitlinxx
- Special Hours: One adult, designed for seniors and those with flexible schedules. 10:00 am to 4 pm weekdays, and any time on the weekends, access all core programs and Fitlinxx during these hours
- Adult Plus: Addition of extra adult over the age of 18 living at the same address, access all hours, all core programs and Fitlinxx
- Day Pass: Access for one person to open gym, open swim, fitness room
- YMCA membership: Those members who want access to other YMCA facilities or programs, will be offered the opportunity to select this when they join or at any time in the future. The City will pay the YMCA 50% of the processing fee for each membership that selects this option.

Categories may be adjusted, deleted or new categories added by agreement of both parties.

d. Program Pricing Structure.

Type	Member/ resident	Member/standard	Non/member /Resident	Non/member /standard
Membership processing fee	\$50 for Adult \$75 for Family	\$50 for Adult \$75 for Family		
Membership	Fee	Fee +	n/a	n/a
YMCA membership	Free	Free	Fee	Fee
Core class	Free	Free	Fee	Fee + \$10
Specialty Class	Member fee	Member Fee + \$10	Non-member fee	Non-member fee + \$10
Swim lessons	Member fee	Member fee + \$10	Non-member fee	Non-member fee + \$10
Fitlinxx	Free	Free	n/a	n/a
Day Pass adult	Free	Free	\$7	\$9

- Core Fitness classes and FitInxx are free for members. Examples:
 - Aerobics
 - Water Fitness
 - Group cycling class
 - 12 week personal fitness program
- Day pass participants can use the gym, the fitness center, and lap or recreational swim. Day pass participants are not eligible to take part in a fitness class except as a one time guest
- Non members who want to take a class would buy a class card good for one month from the date of the first use. These punch cards will have up to 8 punches. This will give them access to the class, but not to other areas of the facility.
- Some Specialty Classes will have an additional cost for everyone. Examples:
 - Strength Training
 - Personal Training
 - Swim lessons

3. Governance.

By June 30, 2007, CITY and YMCA will evaluate the feasibility of establishing a CRC advisory committee. Such a committee could be comprised of teen center, senior center, and health and fitness users as well as Mt. Madonna YMCA board members or advisors as determined appropriate by the CITY and YMCA. If such an advisory committee were determined to be feasible, CITY and YMCA would establish a mission for the committee and plan for supporting its activities.

4. Partnership Evaluation.

As described in Section 2.3 of the Operating Agreement, the parties will conduct an evaluation of the success of the partnership prior to extending the term of Agreement. This evaluation will be presented to the City of Morgan Hill City Council and the YMCA of Santa Clara Valley Metropolitan Board of Directors and Mt. Madonna YMCA board of Directors, as appropriate.

The parties will work together on the development of this evaluation, agreeing to the criteria to be used in the evaluation. The criteria may include:

- Extent to which a high performing CRC staff team has been developed from City CRC, YMCA CRC, and Aquatics Division CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center

- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning.
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

5. Advertising and marketing of facility and programming.

- a. The partnership of the City and YMCA will be prominently displayed on the facility, staff uniforms, and written materials. Both the City and YMCA agree that any differentiation of the two parties for branding purposes is not intended to separate the staff during the operation of the facility, but to take advantage of the brand name of the YMCA and City for marketing purposes. The parties will create a logo to identify and celebrate the partnership.
- b. The CRC Supervisor is responsible for developing a marketing plan in coordination with the YMCA
- c. The parties intend to advertise CRC programming in both City and YMCA publications/resources
- d. Staff nametags may identify special departments of the facility.
- e. Printed materials will say "Centennial Recreational Center, operated in Partnership with the YMCA."
- f. City is willing to have YMCA staff provide information regarding other YMCA programming that would be available to CRC members as part of their membership.
- g. The partnership will be identified with signage inside the building. Printed materials with the YMCA logo and other identifying information may be used at the facility.

6. Senior Services Provided at the CRC.

The YMCA will provide senior services, programs and activities at the CRC, in conjunction with other senior service organizations, according to the following guidelines:

- a. Senior services will be offered a minimum of six hours each weekday throughout the year.
- b. The YMCA will collaborate with and coordinate the activities of senior service providers, such as the Community Action Group, AARP, and the Friends of the Morgan Hill Senior Center to ensure a range of service,

support and enrichment opportunities to seniors at the CRC. Typical programs may include, but will not be limited to: nutrition, health insurance counseling, legal assistance, health screenings, income tax preparation assistance, educational presentations, recreational activities, arts and crafts classes, counseling services, and opportunities for volunteer service. The parties acknowledge and agree that the CRC is a public facility and as such there are certain legal restrictions upon facility use.

- c. The YMCA will operate a daily nutrition program, serving an average of 75 meals per weekday to 350 unduplicated seniors annually.
 - d. The YMCA will offer opportunities for other social service agencies to provide health maintenance, education, and advocacy programs in a location convenient to seniors.
 - e. The YMCA will provide activities and services each month that focus on developing and strengthening individual seniors in spirit, mind and body.
 - f. The YMCA will provide a minimum of one special event per month to maintain interest and enthusiasm.
7. It is understood between the parties that this COP may be amended from time to time by the mutual agreement of the parties to reflect operating experience.

Centennial Recreation Center Operating Budget Framework

EXHIBIT B

Centennial Recreation Center					
	City Aquatics	City CRC Administration, Operations, and Programs	Seniors	YMCA Health/Fitness	CRC Total
EXPENSE	XXX,XXX	XXX,XXX	XX,XXX	XXX,XXX	X,XXX,XXX
REVENUE	YYY,YYY	YY,YYY	-	YY,YYY	Y,YYY,YYY
TRANSFER IN					XX,XXX
OPERATING GAIN/ (LOSS)					
COST RECOVERY	%	%	%	%	%

Seniors:
Senior expense historically budgeted in Recreation Administration budget.

CRC Annual Budget:
Partnership goal to achieve 100% cost recovery by FY 08/09 based on 2006 City and YMCA Market Study.

Aquatics:
Second largest revenue source.
100% City responsibility.

CRC Administration and Operations:
Non-fee based activity expenses (City staff, utilities, supplies, Teen Center, etc.) will be paid from here.
100% City responsibility.

Partnership Reconciliation:
This column will be the agreed upon partnership portion of the budget.

Operating gains or losses will be determined annually from this number.

On an annual basis, membership revenues should significantly exceed expenses to assist in full cost recovery for the CRC.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

APPROVE PURCHASE AND IMPLEMENTATION OF UPGRADED DOCUMENT MANAGEMENT SOLUTION

RECOMMENDATION(S)

Authorize the City Manager to approve a purchase order and execute any related software subscription agreement, with ECS Imaging for the purchase and installation of an upgraded Laserfiche Avante document management system for \$80,987.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Financial Sustainability

REPORT NARRATIVE:

Staff recommends that the City Council approve the purchase and implementation of an upgraded document management system from ECS. Integrated document management systems are a standard business tool for local government organizations which allow all departments within the City to coordinate work flow and business processes, share information, store data and records in conjunction with the City's records retention schedule, provide public access to records that are public, and facilitate customer service. While most cities in the region and throughout the state currently utilize such systems, Morgan Hill relies upon a mixture of non-integrated paper tracking systems and software systems that are often duplicative and very time intensive to carry out the City's many business processes.

Currently every day, information is used, moved, and archived in a very manual process which includes searching, copying, and routing. The process is tedious and very time-consuming, and the inefficiencies of this process divert staff from the crucial business of acting on this information. Now more than ever, it is critical that we update our processes to maximize our resources and staff time. With the current hiring freeze and reduction in contract staff, streamlining our business processes will support maintaining customers service levels. Staff is recommending moving forward with this software acquisition ahead of the budget adoption in order to 1) utilize this time when many of our facilities are closed due to the shelter-in-place orders to implement the variety of workflows and improve business processes and 2) in anticipation of re-opening many facilities, to have these processes in place as many of our current business processes may no longer be viable in our new normal.

The City currently uses a legacy Laserfiche product called Laserfiche United which is limited to retention of records. The software used is over 14 years old and does not provide business process automation, electronic forms management, or public access. The proposed document management system provides integrated and automatic workflows across departments throughout the City, integration with many software systems already in use by the City, unlimited electronic forms for use both internally and for the public, access through a public facing portal to records that are deemed public records, integrated document management in conjunction with the City's records retention schedule, and increased accuracy with automated OCR (Optical Character Recognition) and indexing of records.

The document management software is intended to provide significant process efficiencies throughout the organization. Below are some processes that will be improved and where teams will save time:

- Contract routing
- Special event permits
- Teammate onboarding
- Budget development
- Accounts payable
- Accounts receivable
- Utility services application
- Credit card statement review
- Travel reimbursement requests
- Ethics and sexual harassment prevention training
- Vendor registration
- Public record requests
- Records management
- Development process inquiries
- Field or recreation facilities use/applications
- Recreation Facility Membership and Program Registration Forms Management

The business processes above will be improved through the use of automated workflows that enable automated document routing that saves time and money by reducing the time it takes to photocopy, the time it takes to hand deliver and any lag time, and the manual process of recording the end product. We will develop a rules-based routing system to streamline document handling procedures, automatically notify teammates when documents require them to take action, track every step of the process, and monitor the process to ensure efficiency and that we are meeting deadlines. We will also use a combination of custom and existing tested workflows and forms available in the Laserfiche library. As new forms and workflows are created by different organizations, they are uploaded to the Laserfiche Library for all clients to use. We would also be able to take an existing workflow and customize it to our needs. The ability to use these existing tools will offer significant time savings in developing the workflows for all of the City's various business processes. Efficiency will also be added through our ability to have increased communication and collaboration as the product can be accessed remotely, online, or on mobile devices. This will allow for uninterrupted

workflows as teammates can access the system from anywhere.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommendation by staff for the City Council to authorize the purchase and implementation of a document management system.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve purchase of the document management system. Staff would continue to utilize the existing processes and evaluate other areas where staff time savings and efficiencies could be gained.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

Total funding necessary to purchase the document management system would be \$80,987, which includes the first year's annual maintenance cost of \$14,515. The annual maintenance cost of \$14,515 would mean an increase in the on-going annual expense of \$8,815, as compared to the current annual maintenance cost of \$5,700. The system would be funded by the Information Technology Fund (730), which has sufficient fund balance and budgetary appropriations to accommodate this purchase in the current fiscal year.

CEQA (California Environmental Quality Act):

Not a Project.

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

LINKS/ATTACHMENTS:

1. Quote Upgrade to Avante



ECS IMAGING, INC.
YOUR WORLD CLASS LASERFICHE PROVIDER

ECS Imaging, Inc.
5905 Brockton Ave. Suite
C
Riverside CA, 92506

Phone: 951-787-8768
Fax: 951-787-0831
www.ecsimaging.com

Quote

Q4 2019 V1

Quote Type **Avante**

Quotation For

Name: Michelle Bigelow
Company: City of Morgan Hill
Phone:
E-mail:

Quote Info

Date: 11/20/2019 rev 5/15/2020
Quote Number: 112019
Valid Through: 1/30/2020 7/30/2020
Terms: net 15
Account Manager: pete H
Phone:
E-mail:

Description of Product and Services

Upgrade existing Laserfiche Legacy version (United) to Laserfiche Avante 10.4

Software

Avante includes Workflow and Forms Essentials

SKU	Description	Unit Price	Quantity	Line Total
MSE30	Laserfiche Avante Server for MS SQL with Workflow	\$ 5,000.00	1	\$ 5,000.00
MNF16	Laserfiche Named Full User w/Web Access, Snapshot, and Email	\$ 600.00	45	\$ 27,000.00
MFRM16	Laserfiche Forms Professional	\$ 50.00	45	\$ 2,250.00
MPFRM	Laserfiche Forms Portal Add-on	\$ 7,995.00	1	\$ 7,995.00
MPP5	Laserfiche Standard Public Portal (25 retrieval user licenses)	\$ 25,000.00	1	\$ 25,000.00
MCQ01	Laserfiche Quick Fields	\$ 595.00	1	\$ 595.00
MCQC5	Laserfiche Quick Fields Real Time Look Up and Validation Package	\$ 595.00	1	\$ 595.00
MCNC16	Laserfiche Connector	\$ 25.00	45	\$ 1,125.00
MDCSI	Laserfiche Integration with DocuSign	\$ -	1	\$ -
MCA01	Laserfiche Import Agent	\$ 1,495.00	1	\$ 1,495.00

Trade-in Credit \$ (17,183.00)

Software Subtotal \$ 53,872.00

Annual Maintenance and Licensing

SKU	Description	Unit Price	Quantity	Line Total
MSE30B	Laserfiche Avante Server for MS SQL with Workflow LSAP	\$ 1,000.00	1	\$ 1,000.00
MNF16B	Laserfiche Named Full User w/Web Access, Snapshot, & Email LSAP	\$ 120.00	45	\$ 5,400.00
MFRM16B	Laserfiche Forms Professional LSAP	\$ 10.00	45	\$ 450.00
MPFRMB	Laserfiche Forms Portal Add-on LSAP	\$ 1,600.00	1	\$ 1,600.00
MPP5B	Laserfiche Standard Public Portal (25 retrieval user licenses) LSAP	\$ 5,000.00	1	\$ 5,000.00
MCQ01B	Laserfiche Quick Fields LSAP	\$ 120.00	1	\$ 120.00
MCQC5B	Laserfiche Real Time Look Up and Validation Package LSAP	\$ 120.00	1	\$ 120.00
MCNC16B	Laserfiche Connector LSAP	\$ 5.00	45	\$ 225.00
MDCSIB	Laserfiche Integration with DocuSign	\$ 300.00	1	\$ 300.00
MCA01B	Laserfiche Import Agent LSAP	\$ 300.00	1	\$ 300.00

Annual Maintenance Subtotal \$ 14,515.00

Hardware

SKU	Description	Unit Price	Quantity	Line Total
Hardware Subtotal \$ -				

Professional Services

SKU	Description	Rate	Quantity	Line Total
ECSCI	ECS Consulting Services	\$ 1,800.00	1.00	\$ 1,800.00
ECSCI	ECS Installation Services	\$ 1,800.00	1.00	\$ 1,800.00
ECSCI	ECS Configuration Services	\$ 1,800.00	4.00	\$ 7,200.00
ECST	ECS Training Services	\$ 1,800.00	1.00	\$ 1,800.00

Professional Services Subtotal \$ 12,600.00

Special Terms

Install software above, configure 1 simple forms & workflow to be used as "train the trainer" for system administrator . User Training: search, scan/index, submit forms, approve within workflows. Additional forms & workflows will be under a separate proposal

Subtotal \$ 80,987.00

Tax Rate Software Only (Download Only)

0.000%

Tax \$ -

Software is only available via download and is not subject to CA sales tax

Shipping \$ -

Total \$ 80,987.00

Billing Terms:

All Software and Annual Maintenance is billed 100% at project start. Services are billed 50% up front minimally with remaining Services as incurred.

Annual Priority Support Contract Includes:

- o Maximum 4 Hour Response Time - Upgraded from 24 hours with traditional LSAP support
- o Live Hours of support are 7:30am - 5:00pm PST M-F
- o Unlimited Phone and E-mail Support
- o On-site time is calculated to the nearest half hour and minimum onsite calculation is between 2-8 hours depending on the location
- o On-site time can be used for remedial training, installing updates, and consulting, in addition to support
- o ECS may allow planned after hours support in rare circumstances. In these circumstances Priority Support will be billed at double the hourly rate.

Hardware Return Policy:

Unopened boxed hardware may be exchanged for a full cash or credit refund within 7 days - a 15% restocking fee may apply. Defective hardware will be exchanged for a replacement per the terms and conditions specified on the product warranty card.

- o Two free admissions to the ECS Annual Customer Conference along with Free Admission to Quarterly User Groups
- o Monthly E-Newsletter
- o On-site/remote support hours included as quoted. On-site within next business day as needed. Additional hours of support purchased at a discounted hourly rate. Customers not under this plan can purchase on-site hours at \$250/hour with a 1 hour minimum for remote support, and an 8 hour minimum onsite charge in addition to travel expenses.

S30 LF Server	6600	1	\$6,600.00
Ful User License	566.66	6	\$3,399.96
read only user	220	25	\$5,500.00
Snapshot	100	6	\$ 600.00
Quick Fields base	491.66	1	\$ 491.66
Quick Fields Real time LI	591.66	1	\$ 591.66

\$17,183

Attachment: Quote Upgrade to Avante [Revision 1] (2737 : Purchase and Implementation of Laserfiche)

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, May 6, 2020 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Angie 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 Angie Gonzalez declared the posting of the agenda.

CITY MANAGER'S REPORT

City Manager Christina Turner provided an update regarding the mail theft that we are experiencing in

Minutes Acceptance: Minutes of May 6, 2020 7:00 PM (CONSENT CALENDAR)

Morgan Hill. The first wave of paper stimulus checks began entering the mail on April 22nd, the region saw an increase in mail theft after that. Our Police Department has increased patrols to address this up-tick in crime. The City also sent out a Facebook post alerting the community of the mail theft and precautions they can take including getting mail daily and signing up for informed delivery so that people know what they have coming in their daily mail. US Postal Inspection Services (USPIS) asked that residents help protect themselves from mail theft by picking up their mail every day. The vast majority of mail theft happens overnight. Our police department has conducted surveillance which led to a possible suspect who fled in a vehicle. Detectives are investigating this incident. Our officers are sharing information with the postal investigators who investigate mail theft. Additionally, victims of postal related crimes can file a complaint with USPIS by visiting their website www.uspis.gov <<http://www.uspis.gov>>. When USPIS receives a report of a community mailbox burglary, letter carriers will generally deliver a flyer to all affected victims with contact information, guidance on how to be vigilant, of financial fraud that may have resulted, and tips to help prevent becoming a victim of mail theft in the future. United States Postal Inspection Services assists the postal service in the development and deployment of counter measures to deter mail theft when appropriate.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that High Speed Rail's (HSR) draft Environmental Impact Report (EIR) for the San Jose to Merced subsection is out and available for review. It is a little difficult to find as it is not sitting in plain sight. If you go to their website: hsr.ca.gov <<https://hsr.ca.gov>> on the home page there is a link that says San Jose to Merced Environmental Documents, if you click on that link and scroll towards the bottom you will see a few links there. One says copies of the draft EIR/EIS, that is not the link. If you want to see the actual report, keep scrolling and there is a link called Report with a plus sign and if you click on that plus sign it gives you all the links to the various sections of the report that are on line. There are some technical documents that are too large to be posted online and if you want copies of those you will have to contact HSR.

He stated that the State of California has launched a new website active today, it is [COVID19.ca.gov](https://covid19.ca.gov) <<https://covid19.ca.gov>>. It is a lot more comprehensive than the prior one they had. For people looking to get more information about the State's Shelter in Place orders or testing or other resources this site is much better.

PUBLIC COMMENT

Mayor Constantine opened the public comment at 7:06 p.m.

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

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

PUBLIC COMMENT SUPPLEMENT 4

ADOPTION OF AGENDA

MOTION:

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 3, 5 and 6.

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

1. APPROVE AGREEMENT WITH VALLEY TRANSPORTATION AUTHORITY FOR MEASURE B EDUCATION AND ENCOURAGEMENT PROGRAM FUNDING

Recommendation:

Approve and authorize the City Manager to execute and administer a contract with Valley Transportation Authority to receive funding for Measure B Education and Encouragement Programming.

2. APPROVE UTILITY SYSTEM RADIO PURCHASE FROM MOTOROLA

Recommendation:

1. Approve the sole source purchase of radios for the Utilities Division from Motorola for \$142,267; and
2. Authorize the City Manager to approve the purchase order.

3. ADOPT RESOLUTION APPROVING REVISIONS TO CITY COUNCIL POLICY CP-94-04, THE CITY'S INVESTMENT POLICY

Recommendation:

Adopt resolution approving revisions to City Council Policy CP-94-04, the City's Investment Policy.

4. ITEM PULLED FOR DISCUSSION

5. APPROVE THE APRIL 15, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE APRIL 22, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM MOVED FOR DISCUSSION

4. CERTIFICATION OF MARCH 2020 ELECTION RESULTS

Recommendation:

Adopt resolution reciting the facts of the Special Municipal Election of March 3, 2020 and declaring the results of such other matters as provided by law.

Mayor Constantine opened the public comment at 7:08 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:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay, Spring

PUBLIC HEARING

7. INITIATE ANNUAL ASSESSMENT PROCESS FOR LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

Adopt resolutions approving the following actions:

1. Initiate the proceedings for the levy of assessments for Fiscal Year 2020-21;
2. Approve the Engineer's Annual Report and the proposed assessment levy; and
3. Declare the City Council's intention to levy the assessments in the District and to set the Public Hearing date for June 3, 2020.

Public Services Director Chris Ghione presented the report.

Mayor Constantine opened the public comment at 7:16 p.m.
 Hearing no requests to speak, the public comment was closed.

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

OTHER BUSINESS

8. REVIEW THE NEED TO CONTINUE THE LOCAL EMERGENCY DUE TO COVID-19 RESPONSE AND SHELTER-IN-PLACE ORDERS

Recommendation:

Review current conditions and continue the March 13, 2020 emergency proclamation due to pandemic response.

City Attorney Donald Larkin, City Manager Christina Turner, and Economic Development Director Edith Ramirez gave a presentation.

Mayor Constantine opened the public comment at 8:08 p.m.
 Hearing no requests to speak, the public comment was closed.

Council Member Carr asked staff to come back in two weeks with how we are preparing for re-opening.

RESULT: ACCEPT REPORT

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Carr asked what is the next step regarding COVID-19 and assisting businesses re-open.

Council Member Martinez Beltran asked that we look into easing TOT taxes with hotels and having a Community workshop.

ADJOURNMENT

There being no further business, Mayor Constantine adjourned the meeting at 8:56 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk

Minutes Acceptance: Minutes of May 6, 2020 7:00 PM (CONSENT CALENDAR)



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

CITY MANAGER'S RECOMMENDED FISCAL YEAR 2020-21 AND 2021-22 OPERATING BUDGET AND FISCAL YEAR 2020-21 THROUGH 2025-26 CAPITAL IMPROVEMENT PROGRAM BUDGET

RECOMMENDATION(S)

Continue the review and discussion from the May 15, 2020 Budget Workshop on the Recommended Budget and additional proposed adjustments to the budget based upon continued monitoring and analysis of the effects of the COVID-19 pandemic on the City finances.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities
Financial Sustainability

REPORT NARRATIVE:

The City's finances have been severely impacted by the global COVID- 19 pandemic and economic crisis. The latest projection shows the estimated revenue loss from the City's major revenue sources of approximately \$17 million over the three fiscal years from the current year FY2019-20 to FY2021-22. These estimates are based on the current information that is available and there remains uncertainty with the economic forecast. Further, we still do not know the long-lasting impacts of COVID-19 or whether full economic recovery will happen when the State of California and Santa Clara County begin to re-open based on the Governor's framework. This situation is not unique to Morgan Hill. Local governments across California and throughout the U.S. are facing similar deficits resulting from the impacts of COVID-19.

The City has already taken actions to reduce costs while trying to minimize the effects on the level of public services. To date, the City has implemented:

- ☐ Hiring freeze, except public safety
- ☐ Stricter expenditure controls
- ☐ Furlough of temporary and permanent staff members
- ☐ Limited travel and training
- ☐ Continued evaluation of current contracts and other non-personnel expenditures

During the Virtual City Council Budget Workshop on Friday, May 15, 2020, the Leadership Team presented the proposed budget reductions to align City's expenses with reduced revenue. The Capital Improvement Program component of the Budget Workshop was deferred to the May 20th City Council meeting.

Hale Avenue Extension

During the Council Workshop considerable discussion was had regarding the Hale Avenue Extension. The following background information is being included in this report to help the Council prepare for the continued discussion. City staff continue to recommend the project continue to move forward for several reasons that will be outlined below. Additionally, should the project be delayed or eliminated there will be significant ramifications for the City. Unfortunately, projects of this magnitude take a long time to develop and several decisions must be made along the way to continue to move them forward. The Council does have the option to not move forward with the project, but there will be costs associated with that decision.

The project continues to support congestion improvement by providing an additional north/south arterial roadway on the West side of the City. This was most recently outlined in the 2019 Cut-Through Traffic Study, which reaffirmed the roadway would reduce congestion on Monterey, and not just result in increased cut through traffic. Additionally, the project provides many other benefits and is consistent with the City's Vision Zero policy. It will take cars off the West side residential and collector streets improving safe routes to school for PA Walsh and St. Catherine's schools and will provide a separated Class 1 bike and pedestrian path for the length of the extension.

It is well known that the project has been planned for several decades, but it should be noted that the approval of the project's environmental impact report occurred in 2017 and re-evaluation of the project occurred at that time. Since that time significant investment by the City has been made to acquire all the property necessary for the project. Some of the impacts related to cancelling the project at this point, include:

- Delay could result in the grant funding from Measure B for construction of the project (estimated at \$16.5 million) being lost to the City. There are many projects in line for the Countywide funding, including large expressway projects that could take 5 years of funding individually. Delay on the project could result in the City being unable to get the funding back for years if ever. The City staff and elected officials have worked very hard to get this project to the top of the list for funding in a very competitive program area.
- The land acquisition for the project was funded through traffic impact fees collected for this purpose for many years. If the project does not go forward those funds would likely need to be refunded to developers with a total cost of approximately \$8 million or at minimum paid back to the fund from another funding source (likely the General Fund).

- The County of Santa Clara transferred land to the City of Morgan Hill for the specific purpose of constructing the roadway. The County purchased the property with County Road Funds and if the City does not use the property for the roadway, the City will need to pay the County back for the properties worth hundreds of thousands of dollars.
- The City has utilized eminent domain on the purchase of one section of property for the roadway. This was intentional to have the project shovel ready to be first in line for the very competitive Countywide funding. Additionally, the Water District's flood control project has significant need for much of the property taken by eminent domain. Not constructing the roadway could potentially jeopardize this acquisition and jeopardize that project as well.
- There has been discussion that the land be reserved for open space or park space. This property is not included in the City's current Parks Master Plan for this purpose, nor would the City staff recommend this property be taken on for this purpose as there would not be adequate funds to pay for the purchase or the ongoing maintenance.

LINKS/ATTACHMENTS:

1. Budget Workshop Presentation
2. Fee Waiver and Funding Organizations Outline
3. Principles to guide sustainable budget strategy
4. Budget Adjustments Schedule



Budget Workshop

Fiscal Year 2020-21 and 2021-22

Biennial Budget



Impacts to the Community

- Service level reductions
- Reduced support to community organizations
- Slower response to community requests
- Limited resources for Council initiated programs

Impacts on our Teammates

- Loss of employment for part-time temporary teammates
- Eliminate funding for 8.5 FTE over FY 2019-20 and FY 2020-21
- Loss of contractors working with the City
- Changes in several teammates' job assignments

Agenda

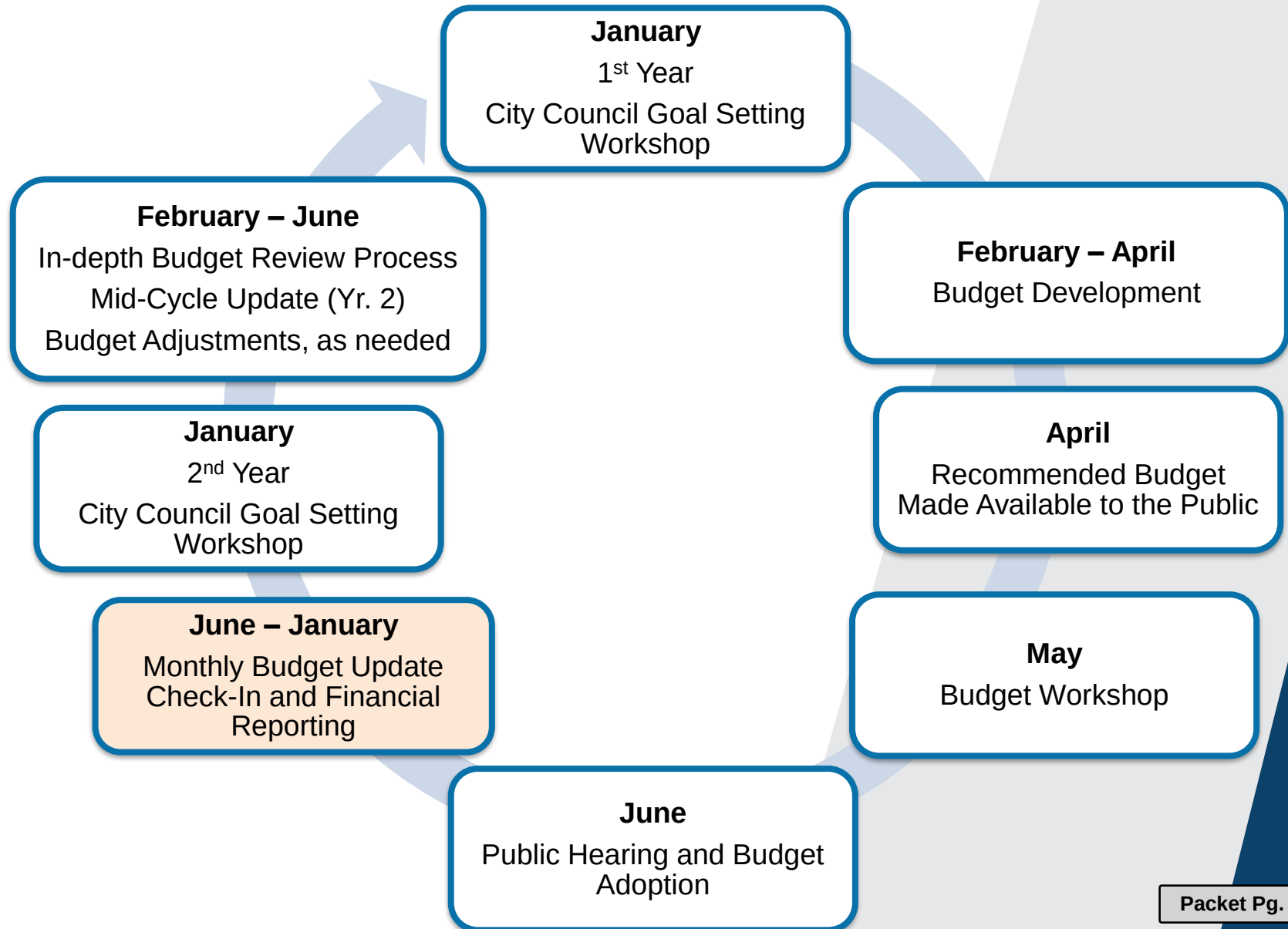
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Time	Topic
9:00 am	Introduction Budget Overview Recommended Budget Proposed Budget Reductions
11:30 am	Capital Improvement Program
12:00 pm	Break
1:00 pm	Engage Morgan Hill Community Advisory Group Input Questions & Answers Public Comment Council Discussion
3:00 pm	Adjourn

Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Biennial Budget Process



Ongoing Budget Updates

- Staff will continue to monitor the budgetary impacts and update City Council and community, coinciding with the Monthly Financials reporting
- Tentative Upcoming Schedule:
 - June 17, 2020 – Budget Hearing/Adoption
 - July 15, 2020 – Council Meeting
 - August – Council Recess (schedule if needed)
 - September 16, 2020 – Council Meeting
 - October 21, 2020 – Council Meeting
 - November 18, 2020 – Council Meeting
 - December 16, 2020 – Council Meeting



FISCAL YEARS 2020-2022

RECOMMENDED OPERATING AND CIP BUDGET

morganhill.ca.gov/budget

Major Funds - Discretionary

General Fund

- **Public Safety, Recreation and Community Services, Street and Park Maintenance Services, Economic Development, and Administration**

Major Funds: Non-Discretionary

Development Services Fund

- Provides planning, building and engineering services

Special Revenue Funds

- Housing and Environmental Services

Capital Project Funds

- Funds infrastructure related projects for streets, parks, storm drainage and public facilities

Enterprise Funds

- Provide for Water and Wastewater Utilities' Operations and Infrastructure Improvements

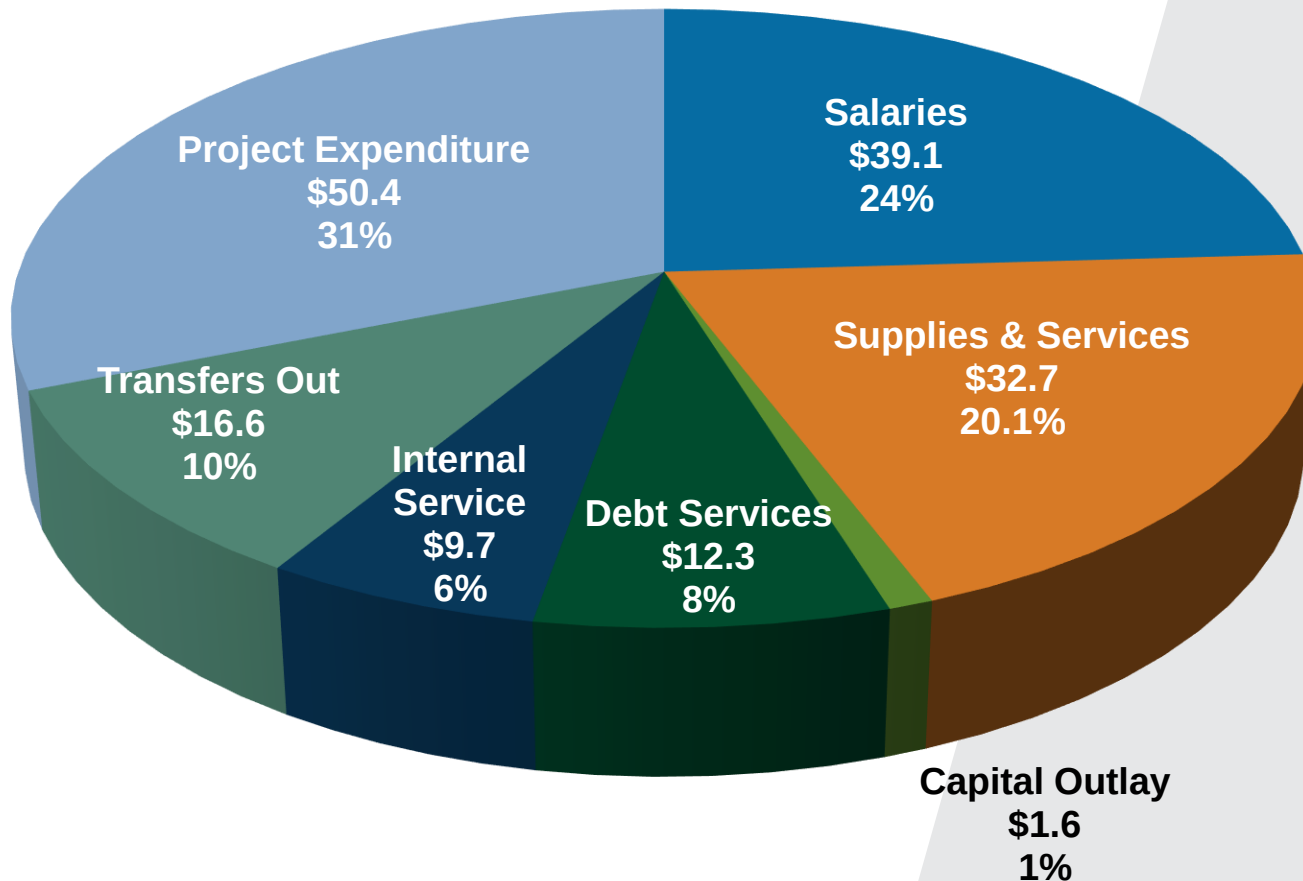
Citywide Recommended Budget Summary (April 22nd)

(In Millions)

	FY 2020-21	FY 2021-22
Operating Budget	\$113.4	\$115.7
Capital Improvement Program	48.9	28.6
Total Recommended Budget	\$162.3	\$144.3

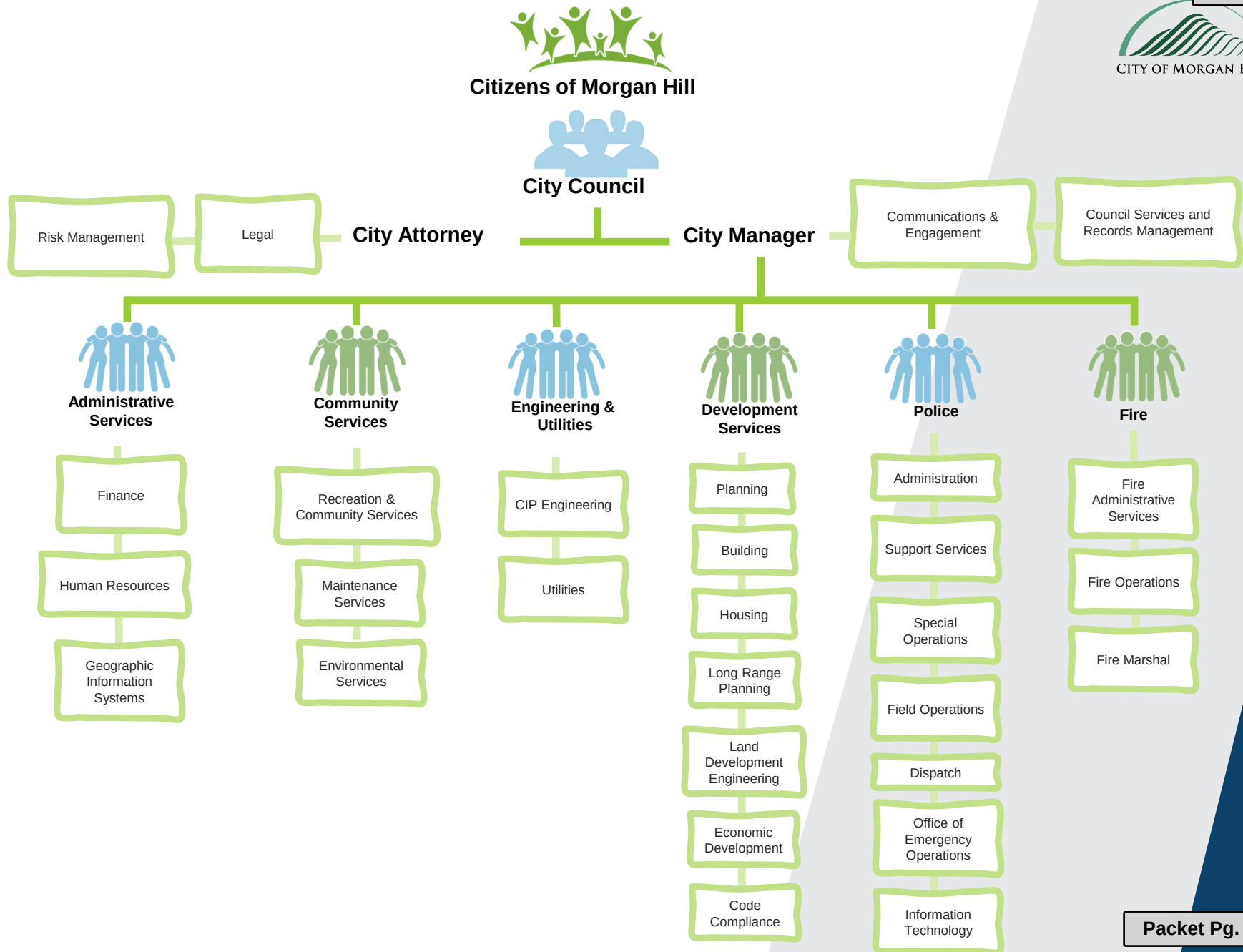
Citywide Expenditures by Category FY 2020-21: \$162.3M

(In Millions)

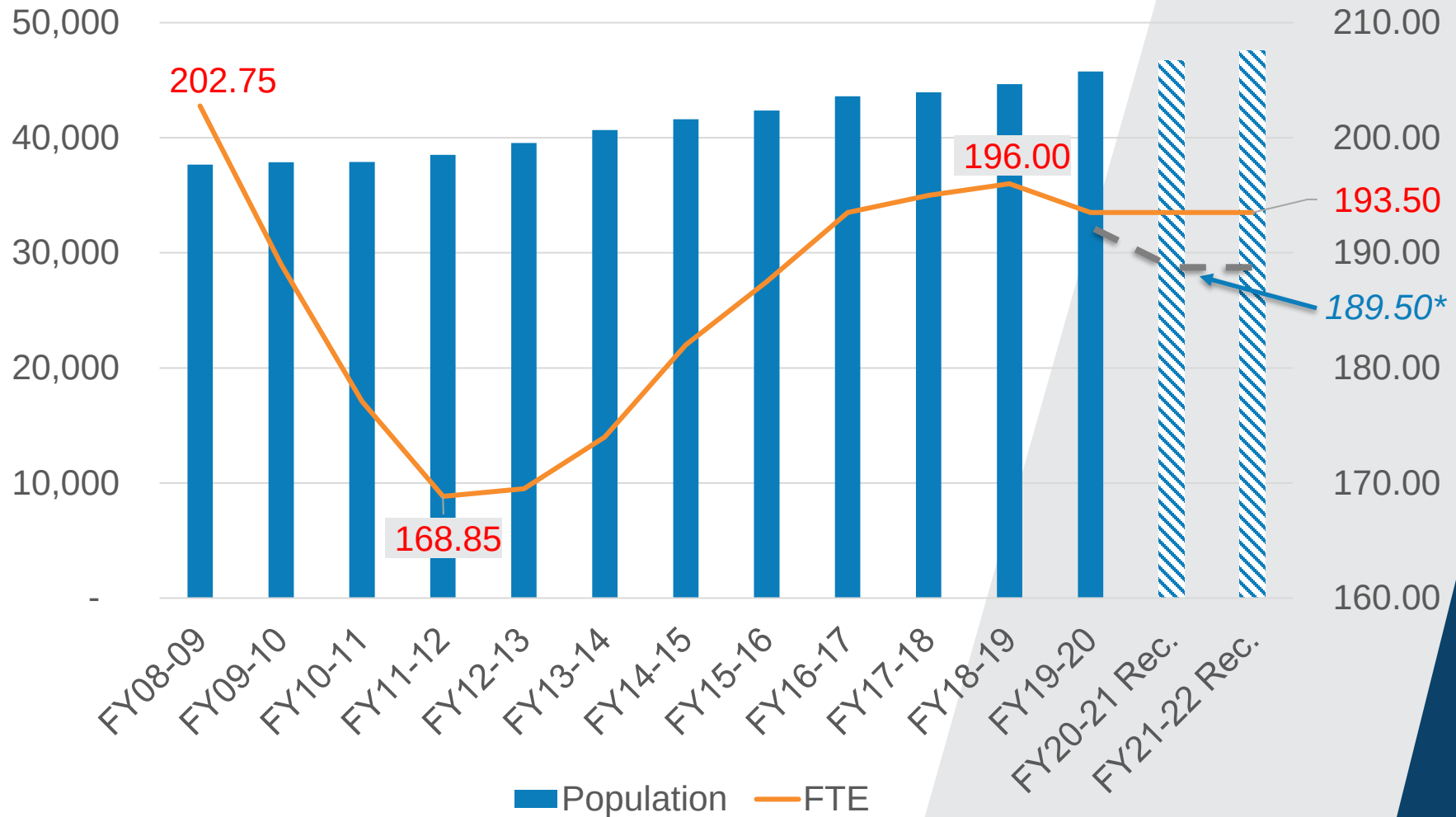


Personnel





History of Funded Full-Time Equivalent (FTE)



* Approved FTE = 193.50, through hiring freeze and attrition, the funding will be maintained for 189.50 FTE

FY2020-21 and FY2021-22 assume 2% population growth (10 yr. avg.)

Personnel Changes

FY2019-20

- 4.5 FTE Eliminated

FY2020-21

- 2 FTE Unfunded through hiring freeze
- 2 FTE Unfunded through attrition (1/2 Year)

General Fund



General Fund Resources by Category FY2020-21: ~~\$46.2~~ **\$43.9** Million

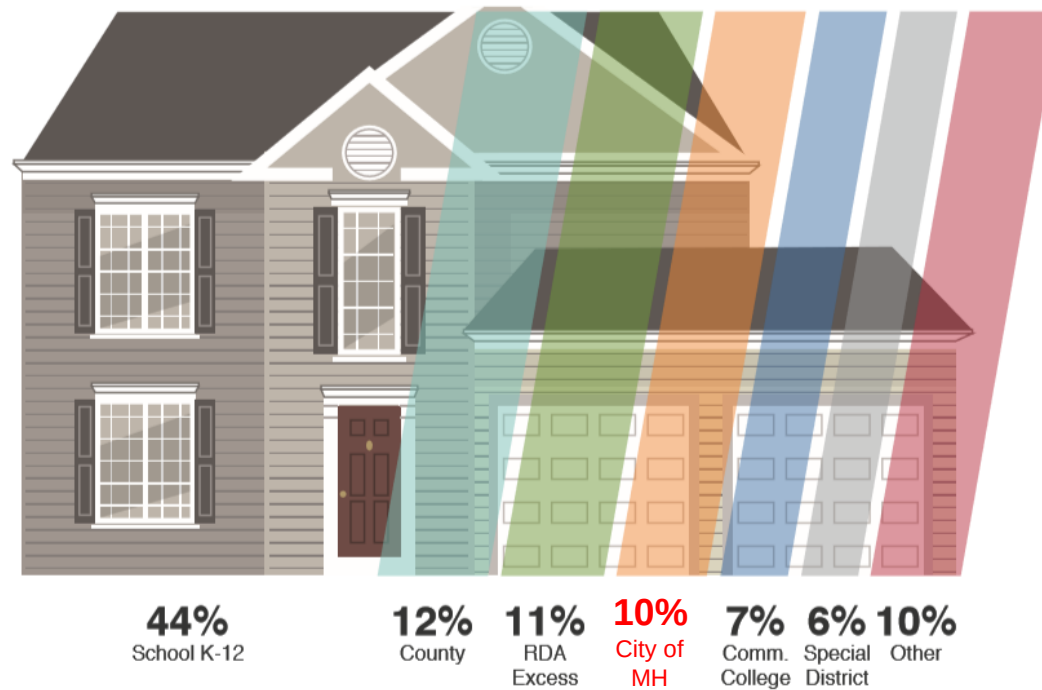
(In Millions)

General Fund Resources Category	(April 22 nd) Recommended	Adjustments	(May 15 th) Recommended	%
Taxes	\$28.2	(\$1.4)	26.8	61%
Current Services	\$9.8	(\$0.7)	9.1	21%
Transfers In	\$2.5	-	\$2.5	6%
Use of Fund Balance	\$3.8	(\$0.2)	\$3.6	9%
Other Agencies	\$0.6	-	\$0.6	1%
Use Of Money & Property	\$0.8	-	\$0.8	2%
Licenses, Permits & Fines	\$0.3	-	\$0.3	1%
Other Revenues	\$0.3	-	\$0.3	1%
TOTAL	\$46.2	(\$2.3)	\$43.9	100%

General Fund – Property Tax

FY 2020-21 = \$13.8M, 34% of GF

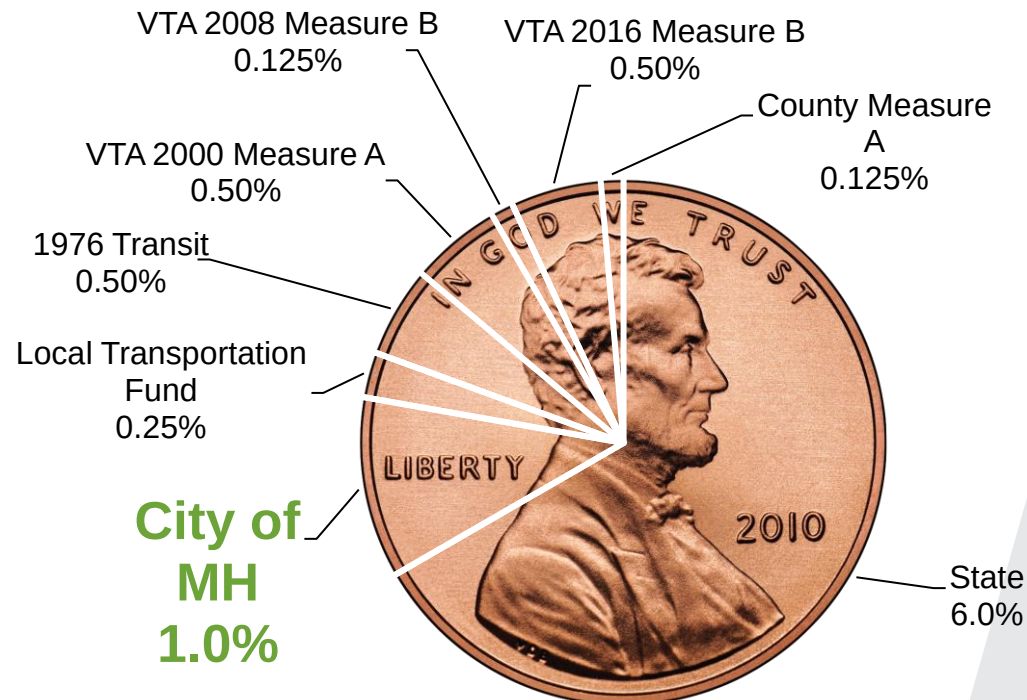
Morgan Hill Property Tax 1% Distribution



General Fund – Sales Tax

FY 2020-21 = ~~\$8.6~~ **\$8.0M**, 20% of GF

Allocation of Sales Tax Rate (Current Sales Tax Rate 9.0%)



General Fund – Recreation Services

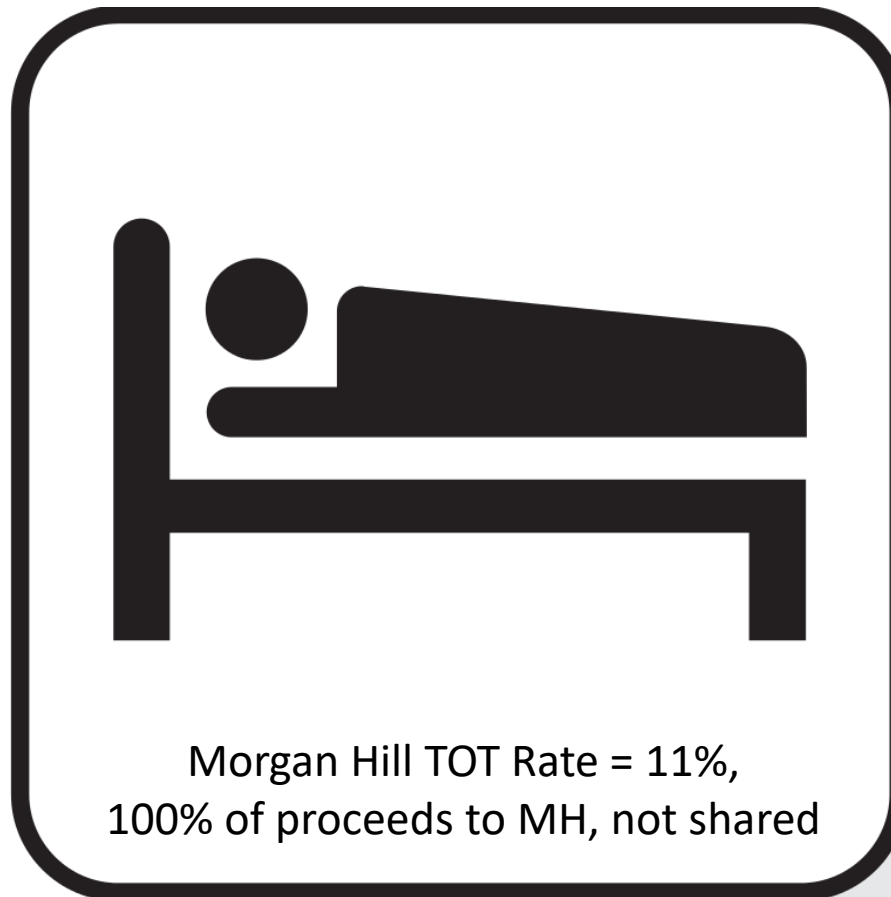
FY 2020-21 = ~~\$7.0~~ **\$6.3M**, 16% of GF

- Recreation
 - Facility Rental Fees
 - Recreation Membership Fees
 - Classes

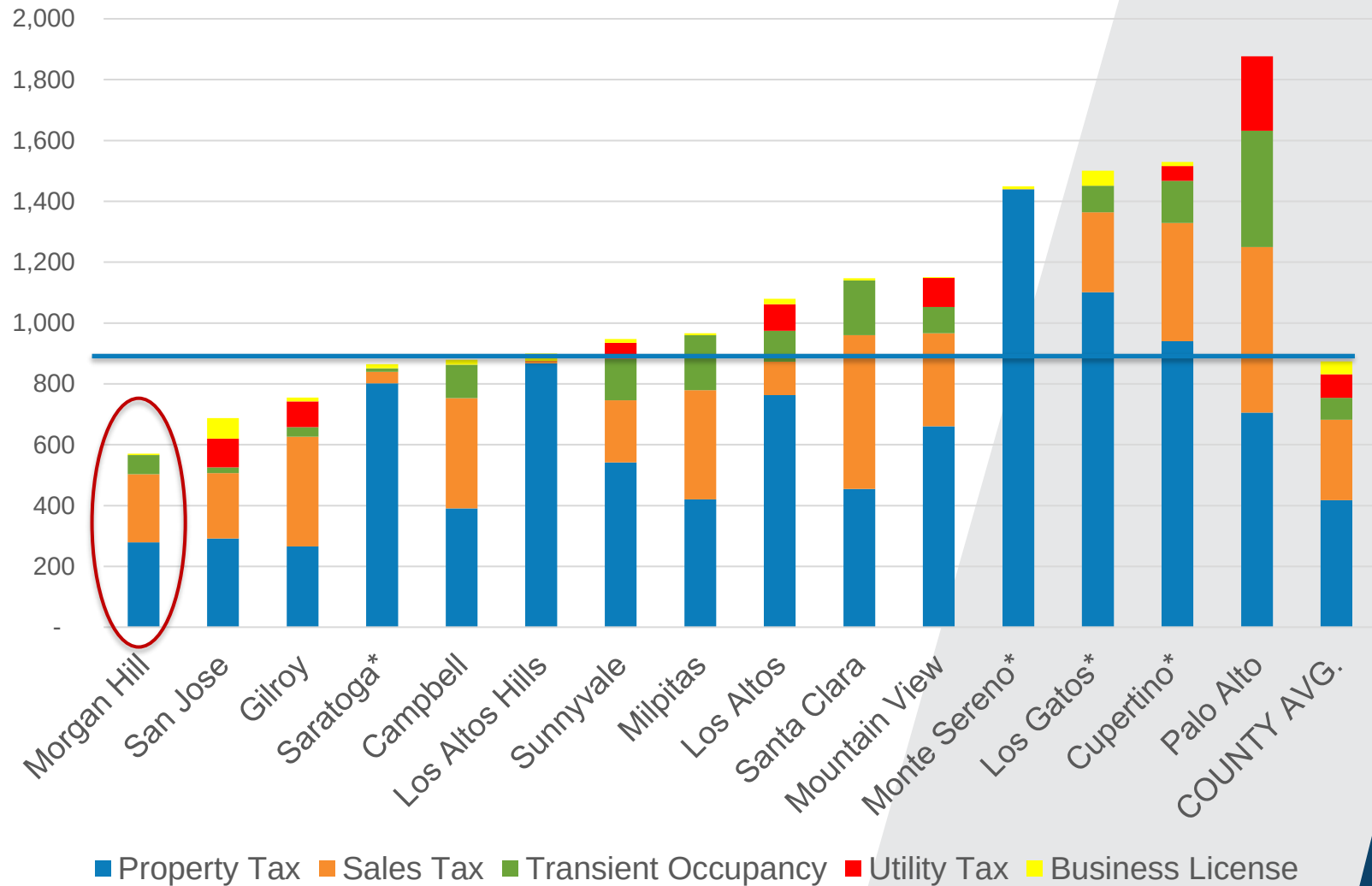


General Fund – Transient Occupancy Tax

FY 2020-21 = ~~\$2.5~~ **\$1.8M**, 5% of GF



General Fund Major Tax Revenue Comparison – Per Capita



*Includes property tax revenues for Santa Clara County Central Fire District

COVID-19 Fiscal Impacts



COVID-19 Economic Recovery Assumptions

Phase I:

- Current estimates are aligned with Phase I
- Shelter-in-place lifted end of May with gradual re-opening
- Recreation facilities open in July with reduced/modified service and hours
- Phase back in services and programs
- Similar fiscal impacts as the Great Recession or worse
- Some fiscal impact from second wave of COVID-19

COVID-19 Economic Recovery Assumptions (cont.)

Phase II

- Extended shelter-in-place
- Extended facilities' closure and slower phasing back in services and programs
- Significant impact from second wave of COVID-19
- More severe fiscal impacts with further reduction in revenues

Fiscal Impacts of COVID-19 on Major Revenue Sources

Property Tax **Loss** Over 3 Fiscal Years

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.1M	\$0.1M	\$0.6M	\$0.8M

Phase I Assumptions:

- Lag effect
- FY2019-20 higher than budgeted
- 0% growth rate in forecast



Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Sales Tax **Loss** Over 3 Fiscal Years (Updated)

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$1.5M	\$1.8 \$2.4M	\$1.5 \$1.6M	\$4.8 \$5.5M

Phase I Assumptions:

- Based on estimates from City's sales tax consultant (HdL), with additional modifications
- Includes Governor's delay/defer assistance programs

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Recreation Services **Loss** Over 3 Fiscal Years (Updated)

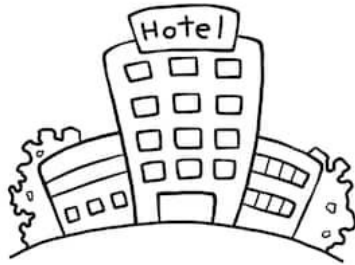
FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.9 \$2.1M	\$0.8 \$1.5M	\$0.4 \$0.9M	\$2.1 \$4.5M



Phase I Assumptions:

- facilities open in July with reduced/modified service and hours
- Decrease in membership and registrants

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)



Hotel Tax **Loss** Over 3 Fiscal Years (Updated)

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.9M	\$0.6 \$1.3M	\$0.2 \$0.3M	\$1.7 \$2.5M

Phase I Assumptions:

- Extended occupancy rate of approximately 20% with slower gradual return to normalcy

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Development (Fund 206) **Loss** Over 3 Fiscal Years **(Updated)**

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$1.2M	\$1.3 \$1.5M	\$0.3 \$0.5M	\$2.8 \$3.2M

Phase I Assumptions:

- Estimated 25% reduction in projects and associated revenues in FY 2019-20 & FY 2020-21
- Slower recovery in development activities (FY2021-22)

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

Other (Gas Tax and Property Transfer Tax) **Loss** Over 3 Fiscal Years **(New)**

FY2019-20	FY2020-21	FY2021-22	TOTAL
\$0.2M	\$0.2M	\$0.1M	\$0.5M

Phase I Assumptions:

- Gas Tax: reduced consumption due to shelter-in-place
- Transfer Tax: reduced revenue due to halt in real estate transactions due to shelter-in-place

Fiscal Impacts of COVID-19 on Major Revenue Sources (cont.)

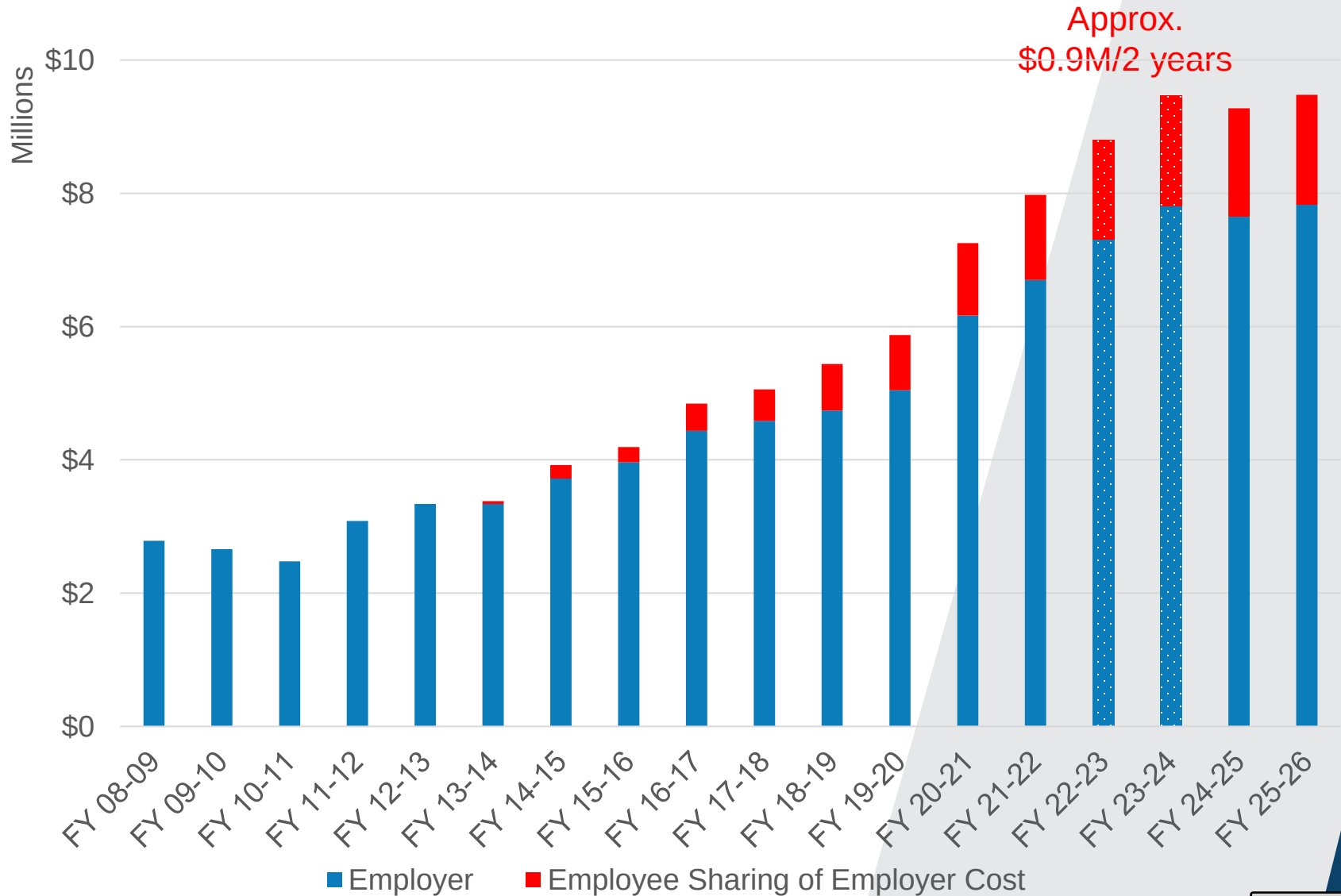
Total Phase I Revenue **Loss** by Major Revenue Categories Over 3 Fiscal Years **(Updated)**

Revenue Type	FY2019-20	FY2020-21	FY2021-22	TOTAL
Property Tax	\$0.1M	\$0.1M	\$0.6M	\$0.8M
Sales Tax	\$1.5M	\$2.4M	\$1.6M	\$5.5M
Recreation	\$2.1M	\$1.5M	\$0.9M	\$4.5M
Hotel Tax	\$0.9M	\$1.3M	\$0.3M	\$2.5M
Fund 206	\$1.2M	\$1.5M	\$0.5M	\$3.2M
Other (Gas Tax, Transfer Tax)	\$0.2M	\$0.2M	\$0.1M	\$0.5M
TOTAL	\$6.0M	\$7.0M	\$4.0M	\$17.0M

Expenditure Adjustments Included in Recommended Budget

- Recreation facility closures
- Recreation cost reductions based on gradual reopening
- Hiring freeze, except public safety
- Election contract services
- Drawdown on General Liability Insurance reserve
- Elimination of all non-essential building maintenance projects

COVID-19 Impact: Pension Cost



Additional Expenditure Reductions and Adjustments



Expenditure Reduction and Adjustments Summary

Fund	Description	YEP 19-20	Rec. 20-21	Rec. 21-22	Total
General Fund (010)	Community Services	\$1.9M	\$1.0M	\$1.1M	\$4.0M
General Fund (010)	Police	\$0.3M	\$0.1M	\$0.1M	\$0.5M
General Fund (010)	Fire	\$0.1M	\$0.3M	\$0.2M	\$0.6M
General Fund (010)	Administration	\$0.2M	\$0.7M	\$0.7M	\$1.6M
General Fund (010)	Development Services	-	\$0.2M	\$0.3M	\$0.5M
Dev. Services (206)	Development Services	-	\$0.9M	\$0.7M	\$1.6M
TOTAL		\$2.5M	\$3.2M	\$3.1M	\$8.8M

Estimated savings previously included in Recommended Budget = \$2.5M
(Building Maintenance, General Liability Reserve Draw, Recreation facilities closure etc.)

Community Services - \$4.0M

- Historic cost recovery rate of 90%
- Should Recreation Cost Recovery not be obtained, other General Fund services will be severely impacted
- Facilities are closed = no revenue

Community Services - \$4.0M (cont.)

Severe impacts are already occurring

- Almost all part-time teammates have been furloughed
- We don't know when and if we will bring them back
- Almost all partner staff at the YMCA are furloughed
- Contractor staff not working

Virtual Membership

- Retaining members for when we re-open
- Only 1% of members have opted to continue to pay to support the virtual membership

Community Services - \$4.0M (cont.)

Re-Opening Facilities

Unknowns

- When can we re-open?
- Under what conditions will we re-open?
- Will members and users come back?

Due to COVID-19 a new baseline must be developed

- Minimize structure to reduce costs
- Different needs for re-opening (cleaning and social distancing)
- Continue virtualization and move to online transactions

Community Services - \$4.0M (cont.)

New Baseline Changes and Budget Reduction Strategy

- New limited hours as Facilities start to open (CRC/AC/CCC)
- Suspend non-fee-based events and promotions
- Suspend operation of Spray Pad at the CCC
- Suspend Masters Swim Program
- Eliminate Marketing and non-fee-based events
- Reduce Mailing of Recreation Activity Guide
- Transfer of resources to future ongoing cleaning and social distancing requirements

Community Services - \$4.0M (cont.)

Staffing Impacts

- Reduce part-time staff, bring back as needed in appropriate roles
- Update partnership with the YMCA
- Reduce 2.5 FTEs in the Recreation Division via retirement, transfer, and elimination of vacant positions
- Redistribution of duties

Community Services - \$4.0M (cont.)

Impacts to Community

- Less available hours for all programming at the CRC and Aquatics Center
- Reduce Senior Center Hours and less managerial oversight (Supervisor will take on other roles, support staff will have less hours to focus solely on Seniors)
- Teen Center will be open only 4 days per week instead of 6

Community Services - \$4.0M (cont.)

Impacts to Community (cont.):

- No special events until funding and staffing levels are restored (Get Fit Event, Summer Fun in the Park, Latin Concert, Latin Zumbathon)
- Spray Pad at the CCC not open until funding and staffing restored
- Reduce Skate Park oversight
- Reduce outreach to gain participation in programs for underserved communities

Community Services - \$4.0M (cont.)

Impacts to Community (cont.):

- Community Promotions and Support for Partner Organizations
 1. Financial Support for Partner Organizations
Hosting Events or Providing Services for the City
 2. Fee Waivers for Rental of Banquet Rooms at CCC
 3. Low Cost or Free Use of Partner Organizations

Police - \$0.5M

Personnel

- Reserve officer pay eliminated (volunteer basis)

Services

- Elimination of cat sheltering and spay/neuter assistance
- Eliminate National Night Out sponsorship, Citizens Police Academy training, Parent Project training, DUI checkpoints supplies and Explorer training
- Other software subscriptions

Fire - \$0.6M

Services

- Savings in CALFIRE contract due to vacancies and/or budget to actuals

Administration/Citywide - \$1.6M

Personnel

- City Manager, City Attorney, and Management, Professional and Confidential COLA eliminated
- Reassign Office Assistant II (.5 FTE) from Recreation to Utility Billing/City Hall
- Eliminate non-CRC gym reimbursement
- Reduction in salary COLA for forecast years by 1%
- Reallocate Assistant City Attorney into GF (25% - additional cost)

Services

- Reduce services, supplies and training

Development Services - \$2.1M

Economic Development

- Reduce PT Temp. staffing
- Reduce supplies and contractual services

Fund 206 loan reduced by \$1.1M to \$1.7M by following actions:

- Reduction of nearly all training and conferences, but for those required for State Certification (ex. Building Inspectors), ISO rating and/or maintenance of Professional Designations (ex. AICP)
- Reduction in Contract Services by 50% (preserved Stormwater and partial outside Plan Check in Land Development Engineering and Building)

Development Services (cont.)

- Terminate contract for Northeast Quadrant Master Urban Design guidance
- Termination of most Part Time employees
- Shift two Current Planners from Fund 206 (Current Planning) to Fund 207 (Long Range Planning) for one year

Development Services (cont.)

- Remove consultant service projects in Long Range Planning with in-house personnel preparation of State-mandated updates to Housing Element and Safety/Hazard Element as well as amendment to Traffic and Circulation Element and newly required Environmental Justice Element
- Remove plans for preparation of Monterey Corridor Specific Plan preparation and related EIR

Development Services (cont.)

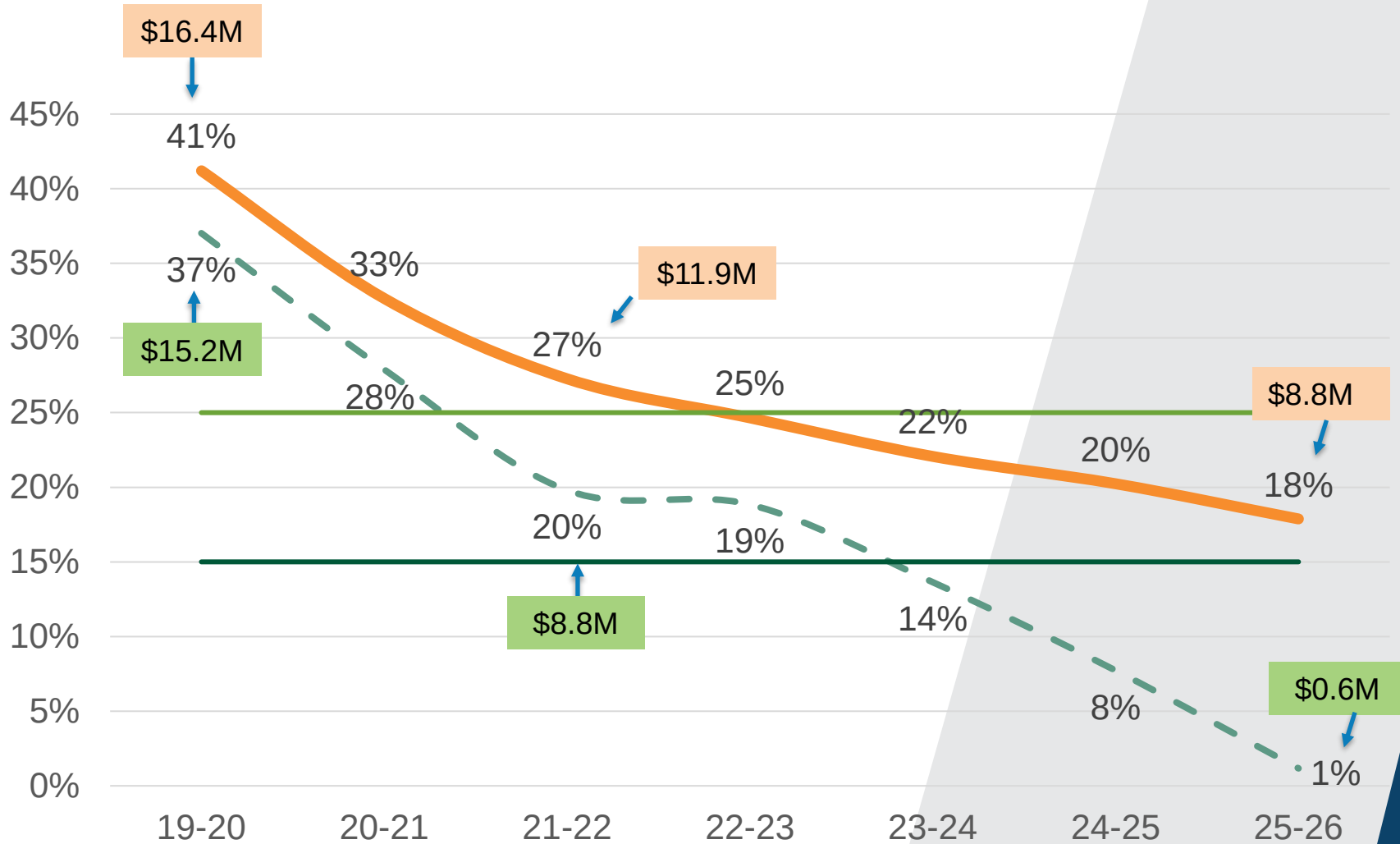
- Restructure Development Services to consolidate Land Development Engineering with Engineering and Utilities under direction of Public Services Director to achieve co-funding and flexibility to engineering functions, reducing cost to Fund 206
- Proposal to fund new development services fee study to reflect appropriate cost recovery revenue on existing permits
- Eliminate funding for Assistant City Manager (Development Services) position in January 2021

Development Services (cont.)

Unrecoverable Expenses:

- **Planning**: \$514K/year – Public counter, general information, strategic initiatives, and special projects
- **Engineering**: \$194K/year – Flood and storm water programs, public counter, general information, and special projects
- **Building**: \$117K/year – Public counter, general information, and code compliance

General Fund Six Year Forecast

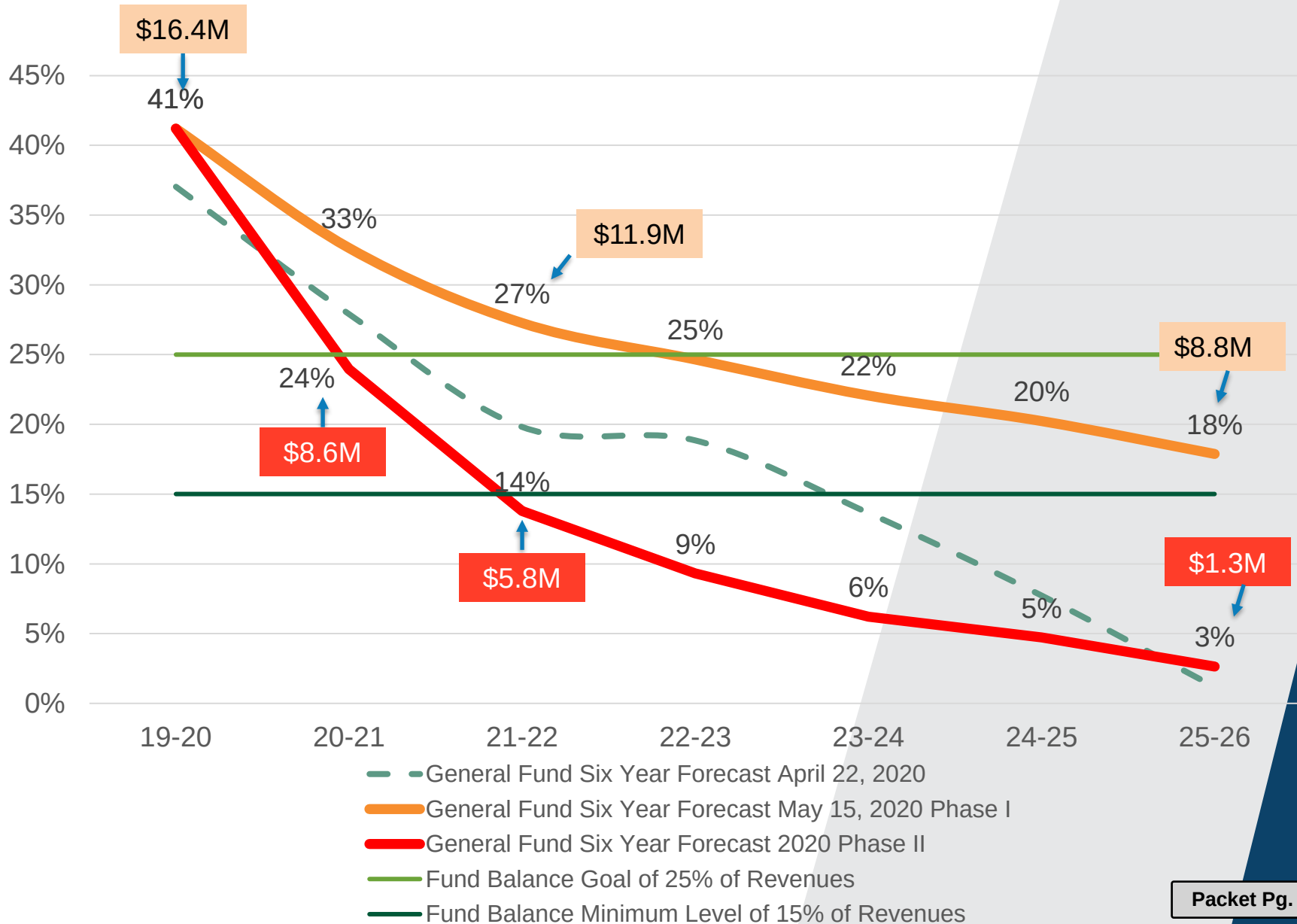


- General Fund Six Year Forecast April 22, 2020
- General Fund Six Year Forecast May 15, 2020 Phase I
- Fund Balance Goal of 25% of Revenues
- Fund Balance Minimum Level of 15% of Revenues

Phase II (Potential Additional Impacts)



General Fund Six Year Forecast - Phase II



Potential Phase II Expenditure Reductions

- Open all bargaining unit contracts to adjust scheduled COLA, enact furloughs or equivalent reductions
- Further reduction in community programs/services
- Additional Departmental reductions in supplies and services
- Suspend Fleet Replacement Contribution (1 FY)
- Suspend Worker's Compensation Contribution (1 FY)
- Suspend General Fund support for Street CIP
- Suspend OPEB Trust Fund contributions

Interfund Loan Policy



Interfund Loans and Policy

Policy

- Adopted June 7, 2017
- All loans need to be approved by City Council
- Interest rate at investment portfolio or LAIF, whichever is higher
- Maximum term of 10 years

Current Interfund Loans

- Storm Drainage to Traffic Impact for Hale Ave. Extension on October 2018
- \$2.25 million repaid in 3 years

Recommended Reserve Policy

15%: “If reserves do – or are projected to – fall below the 15% minimum level at any time, then policy action must be taken within 30 days of such event or projection to rebuild actual or projected reserves back up to the 15% minimum level within the subsequent 12 months”

25%: “Similarly, if reserves do – or are projected to – fall below the long term goal of 25% at any time, then policy action must be taken no later than the next fiscal year such that structural budget balance is projected to be regained within three years of the 25% floor being pierced. Once structural budget balance is regained, steady progress toward the 25% long-term goal for reserves must continue”

Liquidity and Cash Balance

Liquidity:

General Fund Balance

- Unrestricted, un-designated
- Cash and short-term receivables less short-term payables
- General Fund Reserve of \$17.9M at 6/30/19 mostly comprised of cash and investments of \$16.1M

Liquidity and Cash Balance (cont.)

CASH ACTIVITY SUMMARY FY 2019-20

Fund Type	07/1/19 Balance	Change in Cash Balance	3/31/2020 Balance
General Fund	\$ 16,094,062	\$ (2,968,859)	\$ 13,125,203
Community Development	2,835,370	(1,930,700)	904,670
RDA Successor Agency (except Housing)	10,774,671	3,830,862	14,605,533
Housing Successor Agency/ CDBG	4,065,899	(329,728)	3,736,171
Water - Operations	2,862,753	1,014,788	3,877,541
Water Other	6,212,393	2,351,007	8,563,399
Sewer - Operations	1,677,931	1,301,768	2,979,699
Sewer Other	31,500,213	(613,818)	30,886,395
Other Special Revenue	5,130,146	383,166	5,513,311
Streets and Capital Projects (except RDA)	43,758,217	(5,390,006)	38,368,211
Debt Service	240,894	(119,463)	121,431
Internal Service	15,531,375	1,567,853	17,099,228
Agency Funds (assessment dists./refundable deposits)	4,307,504	(1,716,937)	2,590,567
Total	\$ 144,991,427	\$ (2,620,066)	\$ 142,371,361

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.

Existing Unfunded Needs



Unfunded General Fund Needs

Total Annual Unfunded General Fund Needs = **\$6M**

- Police \$1.3M
- Fire \$2.3M
- Building Maintenance and LAD **\$0.1M Updated**
- Pavement Rehabilitation **\$1.1M Updated**
- Street Maintenance \$0.2M
- ~~Park Maintenance \$0.7M~~ ← Addressed via Quimby Fee
- Operational loss due to RDCS Suspension **\$1.0M**

Unfunded Liabilities



Unfunded Liabilities

Total Unfunded Liabilities = **\$56.4M**

- Public Employees Retirement System (PERS) - \$51.6M
 - Other Postemployment Benefits (OPEB) - \$4.8M
 - General Fund Share = 67% or \$37.8M
- Current Funded Status
 - Misc. Plan = 71.6%
 - Safety Plan = 68.3%

Pension - Funded Status

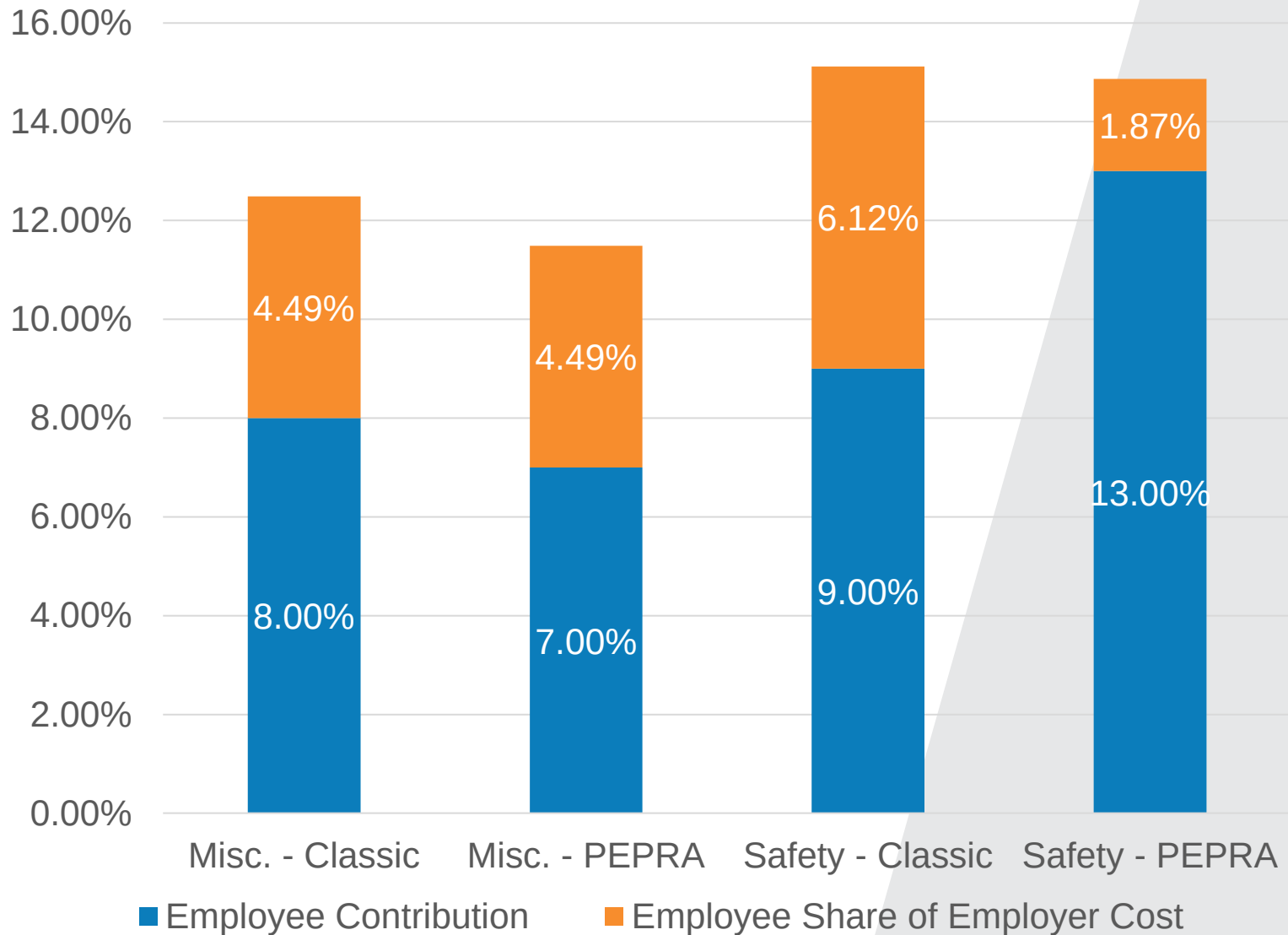
Agency Name	Safety Plan	Misc. Plan
Morgan Hill	68.30%	71.60%
Monte Sereno	N/A	88.20%
Los Altos Hills	N/A	83.60%
Saratoga	N/A	81.80%
Campbell	68.20%	72.20%
Mountain View	69.40%	71.80%
Los Altos	69.30%	70.00%
Santa Clara (County)	67.50%	69.50%
Gilroy	68.10%	68.80%
Sunnyvale	66.40%	68.70%
Milpitas	63.10%	68.50%
Los Gatos	72.00%	68.40%
Cupertino	N/A	66.30%
Palo Alto	62.20%	65.80%
Santa Clara (City)	64.70%	61.00%

Groups	Count	%
Classic	118	67%
PEPRA	57	33%
Total	175	100%

Valuation reports as of FY17-18.

CalPERS funded status for public agencies is 69.8% as of FY17-18.

Pension – Employee Cost Sharing



Pension – Discount Rate Change

- Discount Rate = the expected rate of return on portfolio investments
- In 2016, CalPERS Board changed the discount rate from 7.5% to 7% over three fiscal years, with corresponding incremental increases in payments over 8-year smoothing

Pension – Discount Rate Change

(cont.)

- When the discount rate is reduced, it decreases the funded status
- An additional 0.25% reduction = approximately \$1M/year, before employee sharing
- CalPERS Board may consider an adjustment this fall

Enterprise Funds



Enterprise Funds - Water

- Reduction of revenue to account for bad debt and lower commercial usage offset by increase in grant revenue from Valley Water
 - Anticipate reduced consumption in commercial/industrial, and increased consumption in residential consumption due to shelter-in-place
 - Anticipate increase in bad debt/write-offs due to Governor's order preventing shut-offs
- Groundwater Charge: Valley Water deferring July 1 increase, Board to revisit amount and time in October 2020

Enterprise Funds - Wastewater

- Reduction of revenue by \$300K, to account for bad debt and lower commercial usage
 - No impact of increased residential consumption anticipated as it is based on fixed monthly charge adjusted annually
 - Anticipate increase in bad debt/write-offs due to Governor's order preventing shut-offs
- Planned bond issuance for capital projects outlined in Capital Improvement Program – determining the final amount needed and will return to City Council when appropriate

Sustainable Morgan Hill 2020 – 2021 Strategic Priorities Work Plan Amended



Fiscal Sustainability

- Continue to monitor the COVID-19 impacts and present adjustments as necessary
- Continue the Engage Morgan Hill efforts (conversation about services, funding and priorities)
- ~~Consider a revenue measure in November 2020 (not recommended)~~
- Employ a sustainable budget strategy and identify funding gap
- Define the funding plans for police and fire services, and the City's infrastructure needs

Affordable Housing and Homelessness

- In preparation for the Statewide 6th Housing Cycle, update the Housing Element of the General Plan to respond to new production mandates. The City will actively participate in the development of formula and allocations of “fair share” housing unit assignments
- Engage the community in decisions about where to locate new housing density requirements and necessary on-going changes to objective design criteria which guide quality development
- Continue to respond to the new and proposed housing legislative and policy matters to the benefit of the community

Affordable Housing and Homelessness (cont.)

- Respond to the Governor's 2020 Homelessness initiatives by advocating for direct local dollars and direct access to funding for communities of less than 50,000 population
- Seek out partnerships with non-profit housing developers to create new housing opportunities directly aligned with the City's "fair share" Regional Housing Needs Allocation (RHNA)
- Work with the non-profit owner of affordable units to rehabilitate and extend the life of vital housing supplies at Depot Commons, the Willows, Skeels Hotel, and Villa Ciolino

Community Engagement and Messaging

- Continue to facilitate the Engage Morgan Hill process
- Continue to inform the community about significant development projects
- ~~Provide outreach and engagement with the community on the 2020 United States Census (Completion in August)~~
- Continue to find better ways to reach members of the community that do not speak English
- **Continue to explore, implement and improve upon the use of tools that allow for virtual meetings, communication and engagement**
- **Continue to monitor and evaluate communication and engagement tools and strategies with a continuous improvement focus**

Economic Development

- Complete Request for Proposal (RFP) process and select provider for telecommunications services for City facilities
- Complete an Industrial Land Preservation Policy
- Complete a Retail Concentration Strategy
- Economic Development Outreach and ~~Education/Awareness Campaign~~
- **Business Resiliency Program**

Transportation

- Respond to the Environmental Impact Report on the High-Speed Rail Authority's (HSRA) preferred alternative
- Continue efforts on Hale Avenue extension
- Advocacy will include:
 - Working with the Valley Transportation Authority (VTA), Caltrain, the County, the HSRA and the State to enhance service, secure funding for transportation projects and road maintenance, and protect the community from negative impacts of regional projects
 - Expansion of Highway 101 between Morgan Hill and Gilroy to reduce pass-through traffic and improve commute traffic for South County residents
 - Electrification of commuter rail from San Francisco to Gilroy
 - Funding for priority projects in the South County

Strategies to Address Revenue Impacts



Multiple Ways to Address Revenue Impacts

- Use of reserves/fund balance ✓
- Reduce expenditures ✓
- Seek COVID-19 State and Federal Funds as available ✓
- New revenue sources including ballot measures and Community Facilities District (CFD)

Other Strategies

- Spending money strategically to virtualize (CRM system, Laserfiche, broadband investment, etc.)
- Spend now to save in the future
- Keeping our core services so we can bring services and teammates back as we recover

Capital Improvement Program



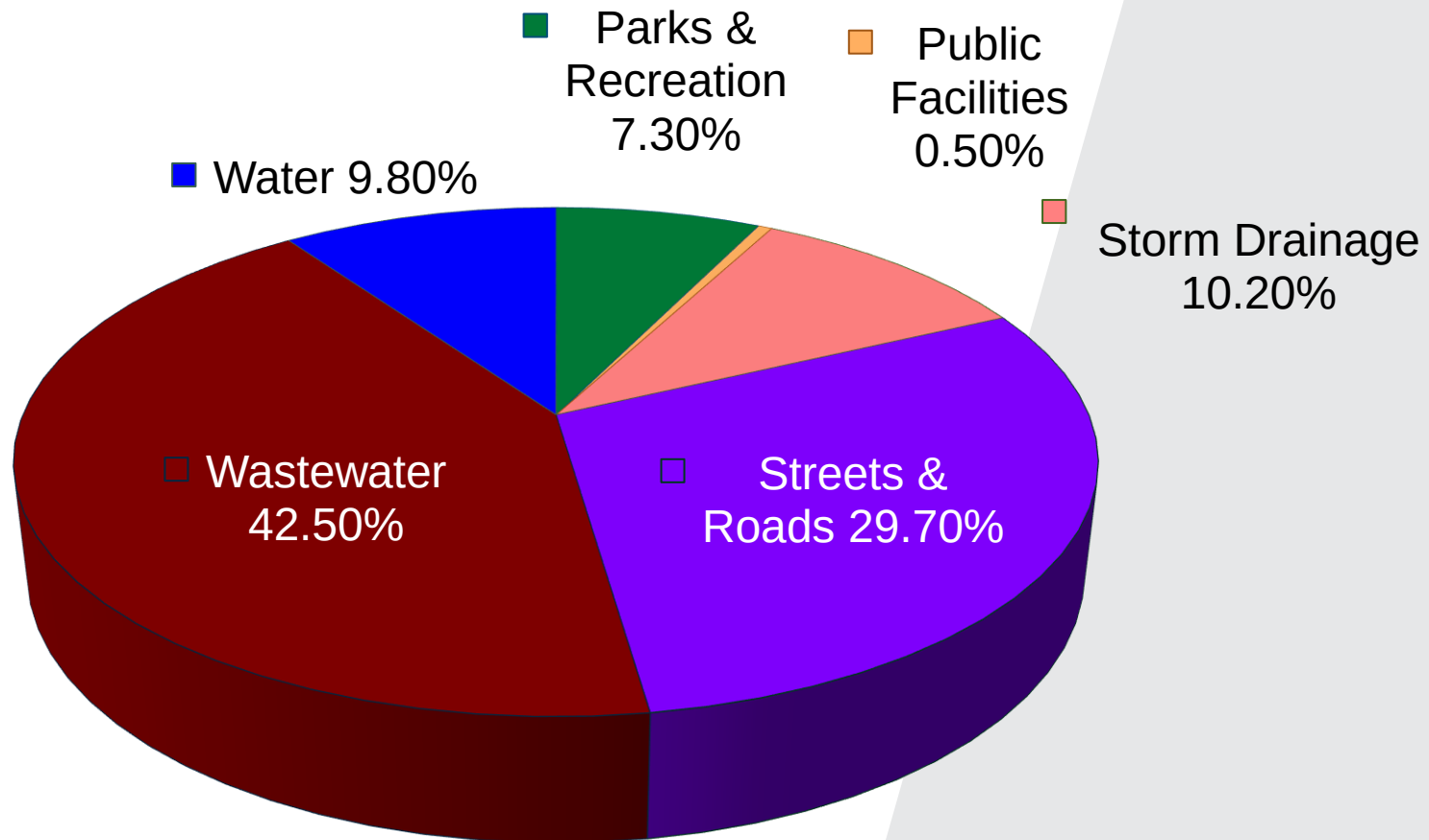
Purpose

- Present FY 2020-21 to 2025-26 Capital Improvement Program
- Discuss Key Projects
- Provide input and feedback on proposed CIP

Capital Improvement Program Summary (Updated)

Project Categories	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	Totals
1 Parks & Recreation	\$1,998,888	\$3,610,000	\$4,680,000	\$3,250,000	\$2,850,000	\$1,550,000	\$17,938,888
2 Public Facilities	\$140,000	\$220,000	\$5,300,000	\$220,000	\$500,000		\$6,380,000
3 Storm Drainage	\$5,500,000	\$2,370,000	\$2,650,000	\$350,000	\$2,650,000	\$350,000	\$13,870,000
4 Streets & Roads	\$19,150,000	\$3,780,000	\$4,650,000	\$4,150,000	\$4,150,000	\$4,200,000	\$40,080,000
5 Wastewater	\$19,056,599	\$13,706,786	\$27,468,322	\$24,843,700	\$6,331,200	\$2,393,700	\$93,800,307
6 Water	\$2,841,023	\$4,743,913	\$6,722,065	\$2,700,000	\$1,300,000	\$400,000	\$18,707,000
Totals	\$48,686,510	\$28,430,699	\$51,470,387	\$35,513,700	\$17,781,200	\$8,893,700	\$190,776,196

Budget by Project Category FY 2020-21 and 2020-22



Capital Improvement Program

Top 8 Projects FY 2020-21 & FY 2021-22

1. Hale Avenue Extension - \$16.8M
2. Sewer System Repair and Replacements - \$13.1M
3. Sewer Plant Expansion - \$11.8M
4. Pavement Rehabilitation Program - \$6.1M
5. Llagas Flood Control - \$4.5M
6. Water Supply Facility and Water Pipeline Repair and Replacement - \$3.1M
7. Storm System Expansion - \$2.7M
8. Borello School/Park - \$2.0M

Guiding Principles

- Projects must be consistent with the goals of the General Plan
- Projects included in an adopted Master Plan
- City Council priorities
- Addressing a maintenance or deficiency issue
- Available revenues to pay for project
- Long term maintenance is considered
- Legal uses of funds

CIP Changes from April 22

- Reduced revenue assumptions related to development impact fees
- Reduced revenue assumptions for Measure B and SB1
- Added Non-Profit Center Project

Current Projects Underway

- Magical Bridge Inclusive Playground Project
- Tennant Sewer Main Project
- Pedestrian Safety Projects
- Main Avenue Bike Lanes
- Madrone Channel Trail Project
- Butterfield Path Project
- CRC and Library Expansions

Parks and Recreation Highlights FY 20-21 & 21-22 Projects

Borello School Park - \$2M

- Joint park/school site off Peet Road

West Little Llagas Creek Trail - \$850,000

- Class 1 Trail south of Watsonville Road
- Primarily grant funded
- Limited additional maintenance necessary

Park Renovations - \$500,000

- Upgrade existing park and recreation facilities
- Support cost recovery

Parks and Recreation Highlights FY 20-21 & 21-22 Projects (cont.)

Sports Facility Planning- \$100,000

- Condit Road Facilities Concept Master Plan
- Environmental Review

Park Land Purchase- \$500,000

- Potential land bank of neighborhood park

Non-profit Center - \$800,000

- Development at CCC
- Will recover cost through tenant leases

Parks and Recreation Highlights Post FY21-22



5.a

- Potential Sand Volleyball Facilities
- Villa Mira Monte Expansion/Renovation
- Park and Recreation Facility Renovations
- Begin banking funding for Ball Field Center

Attachment: Budget Workshop Presentation (2749 : Annual Budget Workshop continued)

Public Facilities Highlights

- New Fire Station - \$5.3M
Construction Commences FY22-23
- Police Department Expansion FY24-25

Storm Drainage Highlights FY 20-21 & 21-22 Projects

Llagas Flood Control - \$4.5M

- Project addresses storm water conveyance infrastructure that drains into the Upper Llagas Creek Flood Protection Project

Storm System Expansions \$2.5M

- Butterfield Basin Expansion
- Other future expansion projects

Trash Compliance - \$50,000

- Infrastructure planning for future mandated compliance projects

Streets and Roads Highlights FY 20-21 & 21-22 Projects

Pavement Rehabilitation- \$5.8M (2 years)

- Annual program intended to address City's pavement rehabilitation needs
- Primarily dedicated funding sources

Hale Avenue Extension \$17M

- Construct Hale Ave from Main to Spring Ave
- Primarily grant funding for construction
- Land acquisition and design completed (\$10M)

Sidewalk Repairs- \$150,000/yr

- Annual program to address damaged sidewalks

Wastewater Highlights FY 20-21 & 21-22 Projects



5.a

Sewer System Repair & Replacements - \$13.1M

- Implement the required repairs and improvements needed to reduce inflow and infiltration

Treatment Plant Expansion (SCRWA) - \$31.5M

- Increased treatment capacity based on flow and organic loading

Wastewater Highlights

FY 20-21 & 21-22 Projects (cont.)

Lift Station Improvements - \$2.1M

- Renovate existing lift stations and force mains

New Trunk Line - \$29.2M

- Planning phase next 2 years
- Construction planned for FY22-23

Wastewater Planning - \$230,000

- Update plans including Master Plan

Water Highlights

FY 20-21 & 21-22 Projects

Well Demolition and Abandonment - \$700,000

- Required demolition of unused wells

Water Pipeline Repair and Replacement \$1.7M

- Various pipeline improvements to address aging infrastructure and reliability issues in the water distribution system

Holiday Lake Reservoir Improvements- \$6M

- Infrastructure improvements (pipes, storage, and pumping capacity) to Holiday Lake water systems to increase water delivery and reliability in the area

Unfunded or Partially Funded Projects

- Ball Field Development
- New Bike and Pedestrian Safety Projects
- Traffic Signal Pre-emption
- Corporation Yard Expansion/Renovation
- Storm System Trash Compliance

Commission Action

- **Planning Commission Meeting 5/12:**
 - Found the proposed CIP consistent with the General Plan
 - Expressed a desire to increase General Fund Spending on Pavement Rehab
- **Parks and Recreation Commission Review:**
 - Scheduled for June 19

Questions?



Engage Morgan Hill Community Advisory Group Input



Questions & Answers Public Comment Council Discussion



Next Steps



Upcoming Important Dates

Time	Date	Event	Location
7pm	Wednesday, June 17 th	City Council Budget Hearing/Adoption	TBD

Questions?



CITY OF MORGAN HILL

Fee Waiver and Community Use

Presentation to Council for Budget Workshop

Community Services Staff believe there are three areas that should be discussed with the Council as part of the budget reduction strategy. These areas include:

1. Financial Support for Partner Organizations Hosting Events or Providing Services for the City
2. Fee Waivers for Rentals of Banquet Rooms at the Community and Cultural Center
3. Low Cost or Free Use for Partner Organizations

Below is a summary for each area along with specific recommendations.

Area 1: Financial Support for Organizations Hosting Events or Providing Services for the City

The funding for each of the groups is budgeted in the City Council Community Promotions funding or in the Community Services Division budget and supported entirely by the General Fund. Staff is recommending reductions in the funding for these organizations. Should the City's fiscal situation improve, funding may be restored.

Group	Detail
Morgan Hill Downtown Assoc (MHDA) Safe Trick or Treat & Holiday Tree Request \$12,000 (\$6,000 for each) Recommendation \$6,000 Total	In conversations with the MHDA, the group indicated if provided limited funding it will support the Holiday Tree over the Safe Trick or Treat event. Given the current scenario, both the MHDA and City staff believe the Safe Trick or Treat is highly unlikely to be held in 2020.
Morgan Hill Kiwanis Club Holiday Lights Parade Request \$6,000 Recommendation \$4,500	The Kiwanis have not discussed as a group, but event representatives have noted that if funding is at 50%, event will be significantly reduced, if there is no funding, they would not host the event.
Independence Day Celebrations Freedom Fest Events Request \$30,000 Recommendation \$15,000	It is unknown if any events at all will occur in 2020. If the funding was reduced by 50% in future years, the group noted they will try to adapt and may do less. Their priorities will be the fireworks and parade. The \$30,000 request was a significant increase from prior years (\$24,000).
South Valley Civic Theater Past Annual Funding \$10,000 Recommendation \$2,500	This funding supports educational outreach activities, tickets, and cast fee waivers to increase access to participants and audiences. These programs would be reduced should funding be reduced.
Healthier Kids Foundation (HKF) Past Annual Funding \$20,000 Recommendation \$10,000	HKF uses the City's funding as a match for their own funding, which allows for Morgan Hill to receive more significant support than other communities. If funding were eliminated the program would be severely reduced in Morgan Hill, not only reducing Morgan Hill funded programs, but also the matching funding provided by HKF. HKF would be able to continue services for an unknown number of years in a more limited capacity with a 50% reduction in funding.
Morgan Hill Historical Society (MHHS) Past Annual Funding \$20,000 Recommendation \$15,000	MHHS uses the funding to maintain Villa Mira Monte. Should the MHHS become insolvent, the site would revert to ownership by the City. This could create increased costs for the City. The group is conducting review of minimum cost structure to maintain facility and landscaping.
United Way 211 Past Annual Funding \$5,000 Recommendation \$0	While the City approved this funding on request from the organization, it was never invoiced to the City nor has the City paid into this in the past.
Boys and Girls Club (BGC) Park Place Program Past Annual Funding \$72,000 Recommendation \$45,000 Friendly Inn Program	Per the Friendly Inn Lease agreement, the BGC will receive \$6,000 in FY 20/21 and \$3,000 in FY21/22 and then no funding support for Friendly Inn operations in future years. The BGC separately runs the after-school program at Park Place for the City. The City is recommending funding for that program be reduced from \$72,000 annually to \$45,000 annually. This will reduce staffing levels, but still allow the program to continue.

Recommendation: \$6,000 FY20/21,
\$3,000 FY21/22, \$0 Future years

Area 2: Fee Waivers for Rentals of Banquet Rooms at the Community and Cultural Center

The following groups request a waiver of fees annually for their events. The Council could consider reducing or eliminating these fee waivers. Fee waiver requests total approximately \$6,000. City staff is recommending reducing fee waivers for these groups to 50%.

Indian Association of South Santa Clara County Flag Raising Event Fees Waiver Request: \$615	The fee waiver is for the use of amphitheater. The organization pays for City event staff time. Should the fee waiver be eliminated or reduced, IASSC would likely scale down the event, with a flag raising at the CCC and a smaller celebration at a picnic area if available. It is not likely the City would be able to generate significant revenue during the time booked as the Amphitheater is not in high demand during the time of this booking.
AAUW Annual Women's Conference Fees Waiver Request: \$2,466	The fee waiver is for use of Full CCC Facility on a Saturday. The organization pays for City event staff time. The AAUW noted they would likely be able to hold a conference with a 50% fee waiver through securing other sponsors or scaling it back a bit. If the entire waiver were eliminated, it would be very difficult, and the organization would have to re-evaluate the event. The event is scheduled to allow for evening bookings of the major banquet rooms at the CCC in the evening, therefore potential revenue is not lost with the hosting of the event.
Morgan Hill Community Foundation Philanthropy Night Event Fees Waiver Request: \$3,000	The fee waiver is for use of Full CCC Facility on a Friday. The organization pays for City event staff time. Should the City reduce or eliminate the fee waiver, the MHCF would continue to host the event but may look for an alternative venue. The group would need to reduce the amount they are able to grant out to local organizations or services. The City would make the Friday night available for booking and may receive rental revenue, should the MHCF not host this event.

Area 3: Low Cost or Free Use for Partner Organizations

The City provides low cost use of the City's small meeting rooms for Community organizations for an \$18 daily use fee. If the City were able to collect full pricing for these uses, the costs and revenue would total over \$17,000 annually. However, after conversations with the 20+ organizations booking under the Community Use Policy, it appears almost all of them would be unable to pay for any significant cost increase and would stop using the facility. For this reason, staff is not recommending any changes to the Community Use Policy.

In addition to the Community Use Policy, the City's rental policy allows for partner organizations to utilize City facilities at no cost. These are partners with the City via contract or government organizations providing service to Morgan Hill and include organizations such as the South County Youth Task Force, County of Santa Clara, the Red Cross and others. While most of these organizations would not pay a fee, these uses are noted as they take up City staff and resources. City staff are not recommending changes in this area at this time but may do so in the future should more long-term changes be necessary.

PRINCIPLES TO GUIDE THE SUSTAINABLE BUDGET STRATEGY

The City Council has adopted the following principles to guide the Sustainable Budget Strategy:

- A. Critical services should be maintained to the greatest extent possible.
- B. Resources should be allocated to the highest priority services.
- C. No city services or functions should be exempt from evaluation.
- D. “Across the Board” approaches shall be avoided because they are not aligned with the Council’s and community’s priorities.
- E. Reductions in service should position the City to take advantage of economic recovery.
- F. Budget reductions should be ongoing and not simply “one time only.”
- G. Council should commit to support employees during the transition and assist those who may be adversely impacted.
- H. Employees and their recognized bargaining units should be actively involved in developing options and implementing the transition.
- I. The City should continue to invest in building organizational capacity by supporting training and employee development.
- J. Community wide tax resources should be allocated first to support community wide services.
- K. Special services designed for only a few should be paid for by user charges and fees.
- L. Administrative and operational efficiencies should be maximized before pursuing new tax revenue.
- M. Reserves and one-time revenues should be used first to invest in capital outlay items that could reduce long range operating costs and, thereafter, fund transition expenses.
- N. New services should not be added, nor existing services expanded unless they are highly valued by the community and there is a willingness to pay for them.
- O. There should be regular monitoring of financial performance and opportunities to make mid-course corrections as warranted.
- P. City policies that may inhibit economic development, especially new retail development, should be reviewed regularly and modified.

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
General Fund

Item #	Department	Revenue/ Expenditure	Description	19-20	20-21	21-22
1	Recreation Service Fees	Revenue	Recreation facilities closure through June 30	(1,200,000)	(673,664)	(446,679)
2	General Fund Taxes	Revenue	Sales Tax		(581,000)	(100,000)
3	General Fund Taxes	Revenue	Transient Occupancy Tax (TOT)		(681,000)	(32,000)
4	General Fund Taxes	Revenue	Other Taxes	(200,000)	(150,000)	(50,000)
Total Revenue Adjustments				(1,400,000)	(2,085,664)	(628,679)
5	Administrative Services	Expenditure	Reallocation of Assistant City Attorney - 25%		(59,596)	(61,906)
6	Administrative Services	Expenditure	Reassign Permanent Part-Time Office Assistant II from Community Services to City Hall		24,000	24,480
7	Administrative Services	Expenditure	Elimination of Non-Centennial Recreation Center (CRC) gym reimbursement		9,000	9,000
8	Administrative Services	Expenditure	City Manager, City Attorney, Management, Professional, and Confidential COLA elimination		71,000	142,000
9	Administrative Services	Expenditure	Human Resources: Reduce/eliminate employee City-sponsored events		7,500	7,650
10	Administrative Services	Expenditure	Council Services and Records Management: New agenda management system		-	11,000
11	Administrative Services	Expenditure	Council Services and Records Management: Reductions in supplies and services		6,500	6,630
12	Administrative Services	Expenditure	Reduce scope of TOT Audits		20,000	20,400
13	Administrative Services	Expenditure	City Manager: Reductions in supplies and services		14,200	14,484
14	Administrative Services	Expenditure	City Attorney: Reductions in supplies and services		21,500	21,930
15	Administrative Services	Expenditure	Laserfiche Annual Contract Increase		(8,515)	(8,685)
16	Administrative Services	Expenditure	Revised loan from the General Fund to Development Services Fund	3,714	647,636	546,088
17	Administrative Services	Expenditure	Revised Year End Projections	193,615		
18	Community Services	Expenditure	Reduction of future building replacement charges (addressed via Quimby Fee)		87,998	90,638
19	Community Services	Expenditure	Eliminate pay increases for Part-Time Temporary employees		45,000	45,000
20	Community Services	Expenditure	Land Development Engineering reorganization		(10,541)	(11,401)
21	Community Services	Expenditure	Recreation and Community Services reorganization		760,000	860,000
22	Community Services	Expenditure	Revised Year End Projections	937,550		
23	Community Services	Expenditure	Reduce service offering at Park Place		30,000	30,000
24	Community Services	Expenditure	Reduce community promotions funding for two years (for details see additional supplement)		61,100	64,100
25	Community Services	Expenditure	Transfer from General Fund to Streets CIP for pavement rehab	1,000,000	-	-
26	Economic Development	Expenditure	Eliminate Part-Time Temporary position in Economic Development		36,400	37,128
27	Economic Development	Expenditure	Development Services reorganization		98,817	205,723
28	Economic Development	Expenditure	Reduction in supplies and services in Economic Development		57,025	58,166
29	Fire	Expenditure	CAL FIRE Contract - Personnel estimated savings	100,000	250,000	200,000
30	Police	Expenditure	Revised Year End Projections	304,489		
31	Police	Expenditure	Eliminate City services for cat sheltering and City's contribution for spay/neuter assistance		35,000	35,700
32	Police	Expenditure	Eliminate Parent Project Training Program		3,000	3,060
33	Police	Expenditure	Eliminate Citizens Police Academy Training Program		7,800	7,956
34	Police	Expenditure	Eliminate annual National Night Out event sponsored by Police Department		10,000	10,200
35	Police	Expenditure	Eliminate DUI Checkpoints		2,500	2,550
36	Police	Expenditure	Eliminate community outreach software platform		7,920	8,078

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
General Fund

Item #	Department	Revenue/ Expenditure	Description	19-20	20-21	21-22
37	Police	Expenditure	Eliminate PD fleet maintenance software subscription		5,000	5,100
38	Police	Expenditure	Eliminate emergency maintenance contract for PD Mobile Command vehicle (shared with the City of Gilroy)		12,500	12,750
39	Police	Expenditure	Eliminate Explorer Training/Conference		5,200	5,304
40	Police	Expenditure	Transition paid Reserves to unpaid		22,000	22,440
Total Expenditure Adjustments				2,539,368	2,279,944	2,425,563

City of Morgan Hill
Amendments to FY 2020-21 and 2021-22 Recommended Budget
Development Services Fund

Revenue/ Item # Expenditure	Description	19-20	20-21	21-22
1 Revenue	Additional revenue loss		(228,000)	(135,000)
Total Revenue Adjustments		-	(228,000)	(135,000)
2 Expenditure	Eliminate Part-Time Temporary employees in Planning		93,980	128,640
3 Expenditure	Move Senior and Associate Planner to Long Range Planning for one year		389,529	-
4 Expenditure	Land Development Engineering reorganization		210,821	228,011
5 Expenditure	Reallocation of Assistant City Attorney - 25%		59,596	61,906
6 Expenditure	Building: Reductions in supplies and services (contract services)		75,000	150,000
7 Expenditure	Planning: Reductions in supplies and services (training and education)		10,000	10,000
8 Expenditure	Land Development and Engineering: Reductions in supplies and services (contract services)		100,000	102,000
9 Expenditure	Development Services Fee Study		(60,000)	
Total Expenditure Adjustments		-	878,926	680,557



CITY COUNCIL STAFF REPORT

MEETING DATE: May 20, 2020

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

REVIEW ECONOMIC DEVELOPMENT BUSINESS RECOVERY PLAN

RECOMMENDATION(S)

Review and provide direction on the Economic Development Business Recovery Work Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint

POLICY CONSIDERATIONS

Should the Economic Development team realign priorities to address the economic crisis caused by the COVID-19 pandemic?

Should the City invest additional resources to implement an Economic Recovery Plan?

What are the activities that should be prioritized for Economic Development?

REPORT NARRATIVE:

The economic landscape has been drastically impacted by the COVID19 pandemic. Since the March 16th Shelter-in-Place (SIP) Order by the County of Santa Clara Public Health Department, most of the City's businesses have experienced closures or decreased production and hotels are functioning at record-low occupancy rates. This pandemic has created an economic crisis that is affecting all, including the City of Morgan Hill as it relates to tax revenue; including sales, property, transient occupancy and gas, and also recreation and development services revenues.

Over the past few months, the City's Economic Development team has provided support to businesses during this pandemic with the following activities:

1. Information on Business Resources:

The City has created a Business Resources webpage with information on various (local, state, and federal) loan assistance programs, tax assistance, and other resources. Three newsletters have been sent to all businesses with information on the latest financial and technical resources.

2. Business Outreach:

In partnership with the Chamber of Commerce and Visit Morgan Hill, a survey was sent to all businesses to better understand business impacts and needs. In addition to electronically deploying the survey, a post card was mailed to all businesses and calls were made to the top 100 employers and sales tax generators.

3. Outreach to Developers:

Outreach is underway to developers processing commercial and industrial projects. Many of these projects are impacted and may be delayed and/or may need to be value-engineered.

4. Technical & Financial Assistance:

The City is collaborating with the Small Business Development Center (SBDC) and the National Development Center to provide much needed financial assistance and technical support. Many Morgan Hill businesses have applied for the Economic Injury Disaster Program through federal Small Business Administration (SBA) that offers up to \$2 million in debt to small businesses, non-profits, and sole proprietors and for the Paycheck Protection Plan (PPP) that offers up to \$10 million and includes a loan forgiveness associated with re-employing or paying salary to affected employees up to eight weeks.

5. Business Resiliency Roundtables:

The team has hosted five Business Resiliency Roundtables on Financial Resources, Communications Strategies, Retail, Tourism, and Manufacturing. These roundtables include industry experts as guest speakers and offer a platform for businesses to share ideas and best practices. Attached is a summary of the findings from the Business Resiliency Roundtables (Attachment 1). A final roundtable for restaurants is scheduled for May 19th.

6. Post COVID-19 Economic Recovery:

Many of the small businesses will be challenged to survive the SIP. Industries may need to re-imagine business plans, creating new coping strategies for ongoing or repeated social distancing restrictions. These realities will impact business models for private, public (government) and non-profit organizations alike. Organizations will need to redesign workspaces, explore different delivery models like developing multiple shifts and alternate work schedules to reimagine the way people gather and convene.

The Economic Development team is compiling a list of strategies to support the economic recovery brought up at the Business Resiliency Roundtables, City Council meetings, and Townhall meetings. These ideas range in levels of complexity, ability to influence the City's financial recovery, and alignment with City's goals. Attachment 2 outlines how some of these ideas align and/or support City policies, shopping districts and industries. It also begins to identify if the recommendations require additional funding resources.

At the May 6, 2020 Council meeting, the City Council directed staff to develop recommendations for an economic recovery plan that responds to the needs of the local business community. The Council asked for strategies to support businesses; solutions by area and by industry; to explore collaborative solutions with non-profits, community and/or business organizations; and to review City policies that can support big and small, existing, and new businesses and developments.

Prior to the COVID-19 pandemic, the Economic Development team's work program was already focused on creating fiscal sustainability by growing existing companies, attracting new industry, growing professional jobs; and advancing goals for healthcare, retail, and tourism. The current goals for Fiscal Year 2020-21 include:

1. **Industrial Preservation Policy:** Update the Industrial Lands Analysis and develop a fiscal analysis of industrial areas that will help shape land use decisions that protect the job creating lands, further strengthening the General Plan (Fiscal Sustainability, Economic Development)
2. **Retail Concentration Strategy:** Develop a policy to strengthen retail nodes and identify requirements that pose impediments for retail and identify areas where retail is not likely to succeed (Economic Development)
3. **Property Business Improvement District:** Work with the Downtown businesses to create a Business Improvement District for property improvements and marketing and promotion for Downtown (Economic Development)
4. **High Speed Rail:** Respond to High Speed Rail's Environmental Impact Report/Study and advocate for mitigations including grade separations for traffic and circulation safety (Transportation, Advancing Regional Initiatives)
5. **Telecommunications RFP:** Commence contract negotiations with service provider to service City facilities and explore enhanced connectivity to residential and commercial neighborhoods (Fiscal Sustainability, Economic Development)
6. **Healthcare:** Assist with the County of Santa Clara's efforts to revitalize the DePaul Health Center, update the Healthcare Market and Service Needs Study and work with other healthcare providers to facilitate expansion of services in Morgan Hill (Supporting our Youth, Seniors, and Entire Community)
7. **Impact Fee Freeze Program:** Perform an evaluation of the program and develop program modifications as an ongoing City program (Economic Development)
8. **Urban Land Institute (ULI) Fall Conference:** Participate with the Silicon Valley Economic Development Alliance to host a program during the 2020 Fall ULI Conference taking place in San Francisco (Economic Development)
9. **Events, Marketing, and Promotions:** Build on the success of 2019 Choose Morgan Hill events, continue to enhance the economic development conversation at a local level. Host a second annual Speaker Series, Wine Stroll VIP business appreciation luncheon, host a Broker Breakfast Retail Runway in partnership with San Jose and Gilroy, and host annual Manufacturing Day (Economic Development)

The above work program continues the implementation of the City's 2017 Economic Blueprint, which is the City's strategy for economic sustainability. The Economic Blueprint is the result of a two-year effort that received hundreds of community inputs and was thoroughly vetted with industry experts and economic development peers to ensure the activities (actions and strategies) would have positive financial return on investment trackable by the tangible economic indicators.

An Economic Recovery Plan to support the business community and the City's economic recovery should consider the existing federal and state economic recovery programs, the local cost to address the impact of a global crisis, alignment with City goals and policies, complexity to implement, and the ability to meaningfully impact the businesses and the City's economic recovery. While there are dozens of strategies identified in Attachment 2, limited resources, coupled with an already robust work program should be considered when identifying priorities for the City's Economic Recovery Plan.

Cost	Alignment	Complexity	Impact
•Financial costs •Manpower requirements	•General Plan •Economic Blueprint •Telecommunications •Other	•Ease to implement •Timing •City Control	•Measures of Success •Opportunity Cost •Prioritization

Focused Economic Recovery Plan

The Economic Development team will continue to implement 7 of the 9 key goals listed in the 2020-21 work program, including:

1. **Industrial Preservation Policy**
2. **Retail Concentration Strategy**
3. **Property Business Improvement District**
4. **High Speed Rail EIR Review**
5. **Telecommunications RFP Implementation**
6. **Support Expansion of Healthcare Facilities**
7. **Free Freeze Program Evaluation**

The team will also continue with current activities supporting businesses during COVID-19, including a) collecting and disseminating information to employers and employees, b) continue with business outreach, c) outreach to the development community, d) providing technical and financial resources in partnership with community partners, and e) continue to identify and evaluate business resiliency strategies. In addition, specific to the COVID-19 re-opening, staff will **f) develop and distribute a handbook with protocols and strategies for re-opening by industry.**

Additionally, it is recommended the following activities be added and prioritized to support recovery of the restaurant industry, retailers, and small businesses, to encourage tourism, and to support new investment.

- A. **MONTEREY ROAD IMPROVEMENTS-** Work with the Engineering Division to explore repurposing a traffic lane and on-street parking along Monterey Road through Downtown that create more space for retailers, restaurants, pedestrians and cyclists. Explore curbside pickup and other on-street parking policies that will help with deliveries, valet parking, etc.
- B. **COMPREHENSIVE PRELIM REVIEW** - Formalize City preliminary review of conceptual commercial and industrial developments. City to schedule prelim review once a month to allow developers to schedule meetings and receive immediate feedback across departments.
- C. **CITY POLICIES** - Review City policies, including conditional use permits (CUPs) (hours of operation), Planned Developments (PDs) (clarity on development), Curbside Pickup, Telecommunication requirements for commercial and industrial developments, Placemaking and landscaping opportunities that will support the City's Place Branding, and Sign Policies that will support existing and new retail development.
- D. **EVENT PROGRAMMING, DOWNTOWN PLACEMAKING** - Explore partnerships with community organizations to develop and execute events that will meet new distancing requirements and will activate Downtown. Activities could include art fairs and other placemaking opportunities like chalk art, outdoor art galleries, murals, and temporary art projects.
- E. **BUY LOCAL CAMPAIGN** - Work with partners to execute a buy local campaign, creating awareness of local retailers and goods to encourage local spending.
- F. **POP UP RETAIL/WINDOW ACTIVATION** - Work with partners to develop opportunities to activate vacant windows and create non-brick and mortar retail opportunities, either with sidewalk activation or with temporary markets.
- G. **APPLY FOR EDA FEDERAL GRANT** - Apply to EDA for funding associated with enhancing telecommunications capacity to expand infrastructure to residential and commercial areas in Morgan Hill.

COMMUNITY ENGAGEMENT: Collaborate

Community outreach during the pandemic has been done through the City's 411 newsletter, a post card to all businesses, three newsletters, email communications, and Business Resiliency Roundtables. This report serves to inform the Council and community on potential next steps.

ALTERNATIVE ACTIONS:

The Council may choose to propose alternative COVID-19 economic recovery strategies.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In 2017, the City Council approved the Economic Blueprint that provides direction the priorities for the Economic Development work program.

On May 6, 2020, City Council directed staff to develop recommendations for an economic recovery plan that responds to the needs of the local business community.

FISCAL AND RESOURCE IMPACT:

The 2020-21 work program items are accounted for in the current Economic Development budget. To address the fiscal impacts to the City from COVID-19, adjustment to the Economic Development Budget was recommended at the May 15 Council Budget Workshop to remove the Economic Development Fellow as well as contractual services and supplies. Some of the previously planned marketing and promotions events (ULI conference, speaker series, wine stroll, broker breakfasts, etc.) are uncertain during COVID-19 and were likely not going to be feasible to implement, therefore were recommended to be suspended at this time.

The new activities listed for consideration in the Recovery Plan are not included in the proposed budget. If the Council chooses to move forward with the planning for the PBID, approximately \$45,000 will need to be allocated to that effort. The other activities will need to be evaluated based on existing work commitments and resources available after the approval of the proposed budget.

CEQA (California Environmental Quality Act):

Not a Project – the Economic Development work plan is an administrative activity of government that will not result in direct or indirect physical changes in the environment. While some projects on the work plan may result in changes to the physical environment, those projects will undergo appropriate environmental review on a project by project basis to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. Business Resiliency Roundtables Findings Summary
2. CMH Covid19 Economic Recovery Strategies

ATTACHMENT 1

Business Resiliency Roundtables Findings Summary

Retail Roundtable:

- Developing a retail resiliency plan is crucial to moving forward. Plan should include giving customer choices and providing more e-commerce options
- Fed Ex recommendations for growing your businesses online presence
 - Visibility: how to attract visitors to your company
 - Utilize Search Engine Optimization (SEO) such as www.highervisability.com
 - Key word linking
 - Social Media
 - Monitor your data analytics
 - Use of Meta & Heta tags
 - Demand Generation: Assist with SEO's
 - Example would be [HubSpot](#), [Marketing 360](#), etc.
 - Understand your SE ranking
 - Access: How to get products to your customer safely
 - Provide alternatives, Fed Ex has secure locations spots for pick-up such as Walgreens or at their retail stores
 - Reverse logistics
 - 79% of customers return if returns are free
 - Transportation: Options a merchant chooses to deliver products to its customer
 - Fed Ex uses: Express, Ground, Customer etc. options
 - Inventory Management: Process of ordering, purchasing, storing,
 - Popular Inventor Management Applications: [Fishbowl](#), [Lightspeed](#), and [Stitch Labs](#)
 - E-Commerce Platforms: Online Store Applications:
 - Example of E-Commerce applications; [Magento](#), [WIX](#), [Big Commerce](#), [Shopify](#)
 - Payment: Important to complete a transaction
 - [Apple Pay](#), [Google Pay](#) [PayPal](#)
 - Marketplace: Online Site where people can buy variety of sellers
 - [Amazon](#), [Walmart](#), [eBay](#), etc.
 - Commerce Management: Managing the online product branding, customer experience, social media
 - Trade Facilitation: Complying with laws
 - Fed Ex can help with this
- Mainstream Boutique
 - Include Facebook Live videos of your store promotions and merchandise
 - Include private consulting meetings with your client
 - Have special events such as "Meet your Vendors"

ATTACHMENT 1

- Provide Curbside Pick-Up option for your customers
- Provide PPE to your customers
- Talk to your landlord and have them consider tagging rent to the end of your lease
- Consider home delivery options
- Work with your local and state government to delay minimum wage increases
- Businesses will need to:
 - Continue to adhere to social distancing rules
 - Think ahead of how people naturally move in their stores
 - PPE: will need to be provided to employees and available to customers
 - Use plexiglass at cashiers and points of customer contact
- Consider partnerships with other business. Example Rocca Market & Tinker Toys partnership
- Consider partnerships between business and property associations

Tourism Roundtable:

- Wineries are having virtual tastings, providing winemaker interviews
- Partnerships between wine and stores. Good example is Kirgin and Lawson Bakery
- VMH has created a business resource link on their site
- Advocacy in Sacramento should be considered to help businesses open safe & quickly
- Parklets should be considered so restaurants could expand their footage
- Road Diet should be considered
- Consider having smaller gatherings
- Events such as the Wine Stroll should have the event, but stagger the times to allow less people
- Consider venues such as the Sports Center for events and wine tastings, and other restaurant events, etc.
- Have restaurants work with local wineries (this has been in the works)
- VMH's role should be prepared to have messaging and plan for when the economy opens up again
- Consider having a bike party Downtown
- Consider using Villa Miramonte Park as a venue (is considered part of Morgan Hill Historic Society)

Manufacturing Roundtable:

- [SFMade](#) & [Manex](#):
 - SFMade is gathering best practices from larger manufacturers and is in the process of developing a best practice book
 - More training will be needed in forecasting for manufacturers
 - Challenge in supply chains will need to be addressed

ATTACHMENT 1

- Many Manufacturers are shifting their services during COVID-19. For example, textile companies are making masks, some are making face shields and alcohol distilleries are making hand sanitizers, food industry are shifting to consumer package goods
- Manufacturers will face both issues in the scaling back of their operations and the scaling up
- Workforce training will be required around maintaining the new social distancing norms
- [National Association of Manufacturers](#) published new guidelines
- MEP- [Impact Washington](#) is a good resource for guidelines
- Leadership and Communication training will be needed at all levels
- **Paramit**
 - Demand for personal dialysis machines are up
 - Hiring tech assemblers
 - Implemented daily employee health checks, hand sanitizers everywhere, office employees are working from home
 - Making their own masks
- **Sun Basket**
 - Buying masks for their own employees
 - Developed a communication piece early to help employees define what is considered “direct contact”
 - No truck drivers, visitors are allowed on premise unless it is an emergency
 - Working with Second Harvest Food
 - Working with “Feed it Forward” to donate meals to hospitals in NY and NJ metro areas
 - Installed a camera system called Fortric that provided thermal imaging fast to track employee temperatures

Communication Resources Round Table:

- Messaging
 - Imaging matters remember to portray a “safe” image that has a social distancing visual
 - Medium matters
 - Use [Google Analytics](#)
- Top suggestions for COVID-19 Strategy
 - Website- Make your customers aware that you’ve update your website to include new COVID-19 protocol
 - Create a resource page
 - Re-imagine how you sell – consider online
 - Email list- brief message out to your customers on what your promoting/selling
 - Describe how your company is taking safety precautions
 - Chose joy & promote positivity
- Social Media Channels
 - Do not post photos with a lot of people
 - Important to develop a brand

ATTACHMENT 1

- Consistency is key
- Business Development
 - Evaluate your brand position
 - Update your website
 - Invest in training and updating workforce
- [Facebook](#) is best social media platform to use. User base is higher
- Know your audience. [Instagram](#) is better for younger audiences
- Good to use [Google Analytics](#)
- [Wix.com](#) and [SquareSpace](#) are easy to use to create website platforms
- [Google Trends](#) is a good way to check what is trending on the internet
- Branding: How do you distinguish your company
 - Walmart vs. Target are good examples of different branding
- How to increase your followers
 - Follow others that follow you
 - Comment and respond to likes and questions
 - Double tap on Instagram

Business Assistance

- Non-profits can apply to both [Paycheck Protection Program](#) (PPP) and [Economic Injury Disaster Loan \(EIDL\) and Advance Loans](#)
- [Morgan Hill Grow Funds](#) requires a business owner to be a citizen or a permanent resident
- There are alternative vendors that accept I-10's, call Dennis King at SBDC
- Hairstylist can apply as sole proprietors to EIDL loans
- Main Street Program is for larger companies with 500 or more employees. This program is in the works.
- Make sure that you connect with your bank if you are applying to EIDL loans or any loan. The unsurmountable increase of traffic has caused glitches in the system.
- LLC businesses can apply for the EIDL Advance Loan

IDEAS FOR MORGAN HILL COVID-19 ECONOMIC RECOVERY STRATEGIES

		FUNDING	RESTAURANTS	DOWNTOWN	RETAIL	SMALL BUSINESS	TOURISM	MANUFACTURING	HEALTHCARE	TELCO
Business Outreach										
1	Parklets	\$	X	X	X	X	X			
2	Monterey Road Improvements (Road Diet)	\$	X	X	X	X	X			
3	Alcohol To-Go*		X	X		X	X			
4	Review Curbside Pickup & Drive-Thru Policies		X	X	X	X	X	X		
5	Temporary Art Installations	\$	X	X	X	X	X			
6	Window Activation	\$	X	X	X	X	X			
7	Pop Up Retail Opportunities		X	X	X	X	X			
8	Event Programming/Activation	\$	X	X	X	X	X			
9	Home Delivery of All Goods*		X	X	X	X		X		
10	Small Business Support Through MHCC		X		X	X		X		
11	Small Business and Downtown Support Through MHDA		X	X	X	X	X			
12	Buy Local Campaign	\$	X	X	X	X	X			
13	Co-Promote		X	X	X	X	X	X	X	
14	Bundle Media Buys	\$	X	X	X	X	X	X	X	
15	Maximize Use of Channel 17		X	X	X	X	X	X	X	
16	Partner Non-Profits with Businesses		X	X	X	X	X	X	X	
17	Promote Regional Hire Program		X	X	X	X	X	X	X	
Development Outreach										
18	Explore Private Development Placemaking Opportunities			X			X			
19	Outreach to Existing Developers			X	X			X	X	
20	Review Landscaping Policies for Placebranding			X			X			
Technical and Financial Resources										
21	Develop Economic Recovery Task Force		X	X	X	X	X	X		
22	Develop Re-Opening Guidance Handbook		X	X	X	X	X	X	X	
23	Identify Business Support Programs (Finance Agreements)		X		X			X	X	
23	Explore Small Business Loans/Grants	\$	X	X	X	X	X			
24	Review City Policies (CUPs, PDs, Sign Ordinance, Sidewalk Cafes)		X	X	X	X	X			
25	Evaluate Impact Fee Freeze Program		X		X	X		X	X	
26	Enhanced Technical Support Through SBDC	\$	X	X	X	X	X	X		
27	Promote Clear Business Policies		X	X	X	X	X	X	X	
28	Comprehensive Preliminary City Review		X	X	X	X	X	X	X	X
29	Review Voluntary Fee to Enhance Wi-Fi		X	X	X	X	X	X	X	X
30	Use City's Telco Contract to Expand Services to Community	\$	X	X	X	X	X	X	X	X
31	Require New Development to invest in Telco Infrastructure		X	X	X	X	X	X	X	X
Miscellaneous										
32	Reinforce Economic Blueprint Goals		X	X	X	X	X	X	X	X
33	Re-Evaluate Economic Blueprint	\$	X	X	X	X	X	X	X	X
34	Support Lodging and Tourism Industry Through VMH & SCWA		X	X	X	X	X			
35	Complete VMH Strategic Plan		X	X	X	X	X			
36	Enhance VMH Branding Campaign	\$	X	X	X	X	X			
37	Develop a City Place Branding/Placemaking Program	\$	X	X	X	X	X	X	X	

*Legislative Advocacy - Not City's Control

Attachment: CMH Covid19 Economic Recovery Strategies [Revision 6] (2740 : Economic Development Business Recovery Plan)

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: supplement for 5-20-20 meeting
Date: Thursday, May 7, 2020 9:29:01 AM
Attachments: [2020-04-29.docx](#)

Michelle Bigelow, MMC, CPMC

Council Services and Records Manager/Deputy City Clerk

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From: John Lang <John.Lang@morganhill.ca.gov>
Sent: Thursday, May 7, 2020 9:23 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: FW: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

For next public comment

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Thursday, May 07, 2020 9:19 AM
To: Barry Holtzclaw <bholtzclaw@newsvmmedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; Nathan Mixer <nmixter@newsvmmedia.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Tammy Brownlow <president@gilroyedc.org>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinforsupervisor@gmail.com>; supervisors@cosb.us; Sally <rebtruck@razzolink.com>; 'Pat Loe' <donpatloe@att.net>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; shawna freels <shawna.freels@ci.gilroy.ca.us>; Robert T. Dillon <rtdillon@garlic.com>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Editor, Gilroy Dispatch, Hollister Freelance and Morgan Hill Times,
Please publish Jon Coupal's Article as a Guest Editorial so that your readers will know how taxpayers feel about being shafted by boondoggle transit fiascoes, and higher gas & diesel taxes to subsidize bankrupt-from-conception public sector transit. We could save billions, and lower local government budget deficits if we privatized transit. Have all transit riders take Uber, Lyft, shuttles, taxis, and pay their fares, and we'd save big bucks. We cannot afford wasteful public sector transit, when we could have much more transportation for much less money,

Communication: Public Comment Supplements (PUBLIC COMMENT)

less fraud, less waste, and less abusive governance by unelected "directors" at joint power authorities that nobody ever voted for. If local elected Supervisors and Councilmembers cared for taxpayers, then they'd end the fraud, waste and abuse at the transit agencies, and that goes double for CAHSRA's Bullet-in-the-Brain Train.

Joseph P. Thompson, Esq.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

cc: PUBLIC COMMENT: NEXT MEETING: VIRTUAL, REAL, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"

----- Forwarded Message -----

From: Jon Coupal <jon@hjta.org>

To: 'Joseph Patrick Thompson' <translaw@pacbell.net>

Sent: Monday, May 4, 2020, 09:54:47 AM PDT

Subject: RE: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]

Sent: Monday, May 04, 2020 9:08 AM

To: Jon Coupal <jon@hjta.org>

Subject: Re: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Jon,

Please send me a copy of your Article and I'll send it to my State Senator.

Joe Thompson

(408) 607-7351 cell phone

Napa

Communication: Public Comment Supplements (PUBLIC COMMENT)

On Saturday, May 2, 2020, 06:23:21 AM PDT, Jon Coupal <jon@hjta.org> wrote:

Wait until you see my column on Monday.

Jon

Jon Coupal, President

Howard Jarvis Taxpayers Association

From: Joseph Patrick Thompson [<mailto:translaw@pacbell.net>]
Sent: Friday, May 01, 2020 2:29 PM
To: Jon Coupal <jon@hjta.org>; Senator Dodd <senator.dodd@senate.ca.gov>
Subject: Fw: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

Dear Jon, and Senator Dodd,

We didn't vote for HSR like CAHSRA is cramming down our throats. We don't want it. Motorists cannot afford to pay more gas taxes for the subsidies it requires. We could have HSR without taxpayers paying a dime, if we put enough UPS, Fedex and Postal Service tonnage aboard HSR. But HSRC and then HSRA never listened to this private sector transport idea. They mistakenly believe that California's taxpayers have endless money.

Joe Thompson

(408) 607---7351 cell phone

----- Forwarded Message -----

From: HSR san.jose_merced@HSR <san.jose_merced@hsr.ca.gov>

Communication: Public Comment Supplements (PUBLIC COMMENT)

To: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Friday, May 1, 2020, 10:59:27 AM PDT

Subject: Automatic reply: SAN JOSE-MERCED DRAFT EIR/EIS COMMENT

[Automatic Reply]

Thank you for taking the time to contact the California High-Speed Rail Authority. Your views and comments are important to our team. We receive a large amount of letters, phone calls and emails, and because this email is not monitored 24 hours a day and generally not on the weekends, we may not be able to respond to you right away. However, our team works very hard to ensure that all comments/questions are read and responded to, when appropriate.

If you have any questions about working at the Authority, please visit our High-Speed Rail Careers page here: <http://hsr.ca.gov/About/Careers/index.html>.

Thank you again for your interest in the California High-Speed Rail Program.

[California High-Speed Rail Authority](#)



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Communication: Public Comment Supplements (PUBLIC COMMENT)

NUCLEAR POWERED AIRCRAFT AND HIGH SPEED RAIL

Jon Coupal

A long forgotten aspect of the nuclear arms race was the costly undertaking by the United States to develop a nuclear powered aircraft as a strategic bomber.

Even before Allied powers defeated Nazi Germany in 1945, both the United States and the Soviet Union were battling for post-war superiority. With the successful detonation of two atomic bombs – bringing the Pacific Theater hostilities to an abrupt halt – the U.S. had a brief period of nuclear superiority over the USSR.

That would not last long as the USSR quickly accelerated its nuclear program and the Cold War was on.

In May 1946, the United States Army Air Forces started the Nuclear Energy for the Propulsion of Aircraft (NEPA) project. The alluring idea was to build an aircraft that could, in theory, stay aloft indefinitely. In 1951, the NEPA project was succeeded by the Aircraft Nuclear Propulsion (ANP) program.

However, despite the efforts of America's best nuclear and aviation scientists working with a virtually unlimited budget, the problems were insurmountable. The biggest hurdle was that nuclear reactors are very heavy. Sustaining one aloft with a fixed-wing aircraft turned out to be a challenge that could only be overcome by using a modified B-26 as a platform.

Reducing the weight of the reactors by shielding them with lighter material put the flight crews in danger from the high risk of radiation exposure. This latter problem never worried the Soviets in that their similar programs were willing to so expose the crews. But this led to an unacceptable mortality rate, even for the Russians.

After more than a decade of throwing good dollars after bad, the aircraft nuclear propulsion programs were substantially terminated by President John F. Kennedy in 1961.

The lessons of history should be instructive for Californians, who have watched for more than a decade as the state has thrown their money into the increasingly impossible high-speed rail program.

Even before the California High-Speed Rail bond proposal appeared on the ballot in November 2008, the Howard Jarvis Taxpayers Association commissioned a study in conjunction with the Reason Foundation because of deep concerns about the project's viability. The study, published in September 2008, warned:

"The CHSRA plans as currently proposed are likely to have very little relationship to what would eventually be built due to questionable ridership projections and cost assumptions, overly optimistic projections of ridership diversion from other modes of transport, insufficient attention to potential speed restrictions and safety issues and discounting of potential community or political opposition. Further, the system's environmental benefits have been grossly exaggerated, especially with respect to reduction of greenhouse gas emissions that have been associated with climate change."

Every negative prediction about the project came to be realized. Even initial advocates of the project, including a former chairman of the High Speed Rail Authority, have turned against the costly boondoggle.

At the end of 2018, California's own State Auditor issued a scathing report excoriating the project's mismanagement, waste and lack of transparency. Speed-readers needed to go no further than the subtitle to learn the conclusion: "Flawed Decision Making and Poor Contract Management Have Contributed to Billions in Cost Overruns and Delays in the System's Construction."

Nothing has improved since then, and much looks even worse.

In December of 2019, the Federal Railroad Administration objected to the California High-Speed Rail Authority's plan to issue a request for proposals to build train track and install electrical wiring and maintenance facilities. The FRA warned, "it is premature for CHSRA to undertake another major design-build contract." Disregarding the concerns, the rail authority went ahead the next day with its plan to issue the RFP.

In February, the Authority issued its latest two-year "business plan," which once again increased the projected cost and reported a further delay in completion. Color us shocked.

Soon after, a draft environmental document outlined the preferred route from Bakersfield to Palmdale, an engineering feat that would cost \$18.1 billion and

mow down a high school, a homeless shelter, a church, eight motels, 253 housing units, 311 businesses and 175 agricultural fields.

In March, the L.A. Times revealed that employees of the rail authority's top consultant had been ordered to hide bad news about the project.

There's no hiding it. The Legislative Analyst's Office concluded that the latest HSR business plan is not realistic, has significant funding challenges, is susceptible to further cost overruns and is inconsistent with voter intent because it relies on public subsidies.

In the 1960s, the President and Congress wisely pulled the plug on a failed project when it became obvious that all the money in the Pentagon couldn't make it fly. Until California's government wises up, we'll be stuck watching our taxpayer dollars fly out the window.

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: 5/20/20 public comment supplement
Date: Friday, May 15, 2020 3:56:32 PM
Attachments: [AGs Complaint against Uber & Lyft.pdf](#)

From: Joseph Patrick Thompson <translaw@pacbell.net>

Sent: Thursday, May 14, 2020 1:53 PM

To: Barry Holtzclaw <bholtzclaw@newsymedia.com>; Nathan Mixter <nmixter@newsymedia.com>; Gilroy Dispatch Editor <editor@garlic.com>; City Council Members City of Gilroy <allcouncilmembers@ci.gilroy.ca.us>; shawna freels <shawna.freels@ci.gilroy.ca.us>; Mike Wasserman <askmike@garlic.com>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; Gary Walton <gary@custom-1.com>; Tammy Brownlow <president@gilroyedc.org>; Robert T. Dillon <rtdillon@garlic.com>; Eric Howard <ehoward1965@gmail.com>; John Lang <John.Lang@morganhill.ca.gov>; Sbcrc Balers <onemorejones@yahoo.com>; Econ Dev SBC <sbcedc@hollinet.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; sbccog <info@sanbenitocog.org>; Kollin Kosmicki For Supervisor <kollinfor-supervisor@gmail.com>; supervisors@cosb.us; 'Pat Loe' <donpatloe@att.net>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; cityclerk@hollister.ca.gov

Subject: LAWSUIT BY CALIFORNIA ATTORNEY GENERAL, SF, LA & SAN DIEGO, AGAINST UBER AND LYFT: ASSAULT ON SMALL BUSINESS IN CALIFORNIA

Dear Barry and Nathan,

At a time when California small business is under assault by the worldwide pandemic, that has cast our economy into the depths of a Great Depression, our State Attorney General and three big cities' attorneys sue small business owners in the transportation field. Already crucified, strangled and suffocated by governance abuses in California, and confiscatory taxes/fees, forced to subsidize government owned transport hemorrhaging red ink, transit agencies bankrupt-from-conception, capped-off by the Supermassive Black Hole Bullet Train, our government in California would snuff Californians trying to make a living. I thought we were to encourage small business? What hypocrites we are.

A few miles from my high school there were two garages where two sets of two young men started their small businesses:

Hewlett and Packard; and Jobs and Wozniak.

What would have happened if our government had snuffed-out those two small businesses started in garages in Cupertino and Los Altos?

AB-5 is contrary to the federal law signed by President Clinton, and carried in the House by Norm Mineta, later Secretary of Transportation.

So, do we want our law to encourage small business in transportation, as President Clinton and Norm Mineta wrote, or do we want to crush transport small business like AB-5 does in California?

History shows that the sounder public policy is to encourage, not kill-off, small business.

Caveat viator.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Past-President, 1999-2001, 2006, Gilroy-Morgan Hill Bar Assn.

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**cc: PUBLIC COMMENT: NEXT MEETING, VIRTUAL OR REAL; REGULAR, SPECIAL, STUDY
SESSION, PUBLIC
WORKSHOP, PRIVATE RETREAT, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-
CALLED
MOBILITY PARTNERSHIP**

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Communication: Public Comment Supplements (PUBLIC COMMENT)

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**NO FEE PURSUANT TO
GOVERNMENT CODE § 6103**

[Plaintiff's Counsel Continued on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

**UBER TECHNOLOGIES, INC., A DELAWARE
CORPORATION; LYFT, INC., A DELAWARE
CORPORATION; AND DOES 1-50, INCLUSIVE,**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, AND
PENALTIES**

**[VERIFIED ANSWER REQUIRED
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 446]**

Communication: Public Comment Supplements (PUBLIC COMMENT)

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26 *Attorneys for the People of the State of California*

1 Plaintiff, the People of the State of California (“People”), by and through Xavier Becerra,
2 Attorney General of the State of California; Michael N. Feuer, Los Angeles City Attorney; Mara
3 W. Elliott, San Diego City Attorney; and Dennis J. Herrera, San Francisco City Attorney, bring
4 this action against Uber Technologies, Inc. (“Uber”), Lyft, Inc. (“Lyft”), and Does one through
5 fifty (collectively “Defendants”), and allege as follows:

6 INTRODUCTION

7 1. In their early stages, when Uber and Lyft started selling ride-hailing services in 2010
8 and 2012, respectively, they made the calculated business decision to misclassify their on-demand
9 drivers as independent contractors rather than employees. Both companies continue to
10 misclassify their drivers—and have exploited hundreds of thousands of California workers—in
11 direct contravention of California law.

12 2. By misclassifying their drivers, Uber and Lyft evade the workplace standards and
13 requirements that implement California’s strong public policy in favor of protecting workers and
14 promoting fundamental fairness for all Californians. This longstanding policy framework
15 includes a comprehensive set of safeguards and benefits established by the State of California
16 (“State”), cities, and counties, such as minimum wages, overtime premium pay, reimbursement
17 for business expenses, workers’ compensation coverage for on-the-job injuries, paid sick leave,
18 and wage replacement programs like disability insurance and paid family leave. Uber and Lyft
19 owe their drivers these benefits and protections.

20 3. Recognizing the serious problem of employee misclassification and the harms it
21 inflicts on workers, law-abiding businesses, taxpayers, and society more broadly, the California
22 Legislature enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5
23 (2019-2020 Reg. Sess.) (“A.B. 5”).) A.B. 5 codified and extended the California Supreme
24 Court’s landmark, unanimous decision in *Dynamex Operations W., Inc. v. Superior Court* (2018)
25 4 Cal.5th 903, reh. denied (June 20, 2018) (“*Dynamex*”). California law is clear: for the full
26 range of protections afforded by California’s Wage Orders, Labor Code, and Unemployment
27 Insurance Code, workers are generally presumed to be employees unless the hiring entity can
28

1 overcome this presumption by establishing each of the three factors embodied in the strict “ABC”
2 test.

3 4. Uber and Lyft cannot overcome this presumption with respect to their drivers. Uber
4 and Lyft are traditional employers of these misclassified employees. They hire and fire them.
5 They control which drivers have access to which possible assignments. They set driver quality
6 standards, monitor drivers for compliance with those standards, and discipline drivers for not
7 meeting them. They set the fares passengers can be charged and determine how much drivers are
8 paid.

9 5. Uber and Lyft are transportation companies in the business of selling rides to
10 customers, and their drivers are the employees who provide the rides they sell. The fact that Uber
11 and Lyft communicate with their drivers by using an app does not suddenly strip drivers of their
12 fundamental rights as employees.

13 6. But rather than own up to their legal responsibilities, Uber and Lyft have worked
14 relentlessly to find a work-around. They lobbied for an exemption to A.B. 5, but the Legislature
15 declined. They utilize driver contracts with mandatory arbitration and class action waiver
16 provisions to stymie private enforcement of drivers’ rights. And now, even amid a once-in-a-
17 century pandemic, they have gone to extraordinary lengths to convince the public that their
18 unlawful misclassification scheme is in the public interest. Both companies have launched an
19 aggressive public relations campaign in the hopes of enshrining their ability to mistreat their
20 workers, all while peddling the lie that driver flexibility and worker protections are somehow
21 legally incompatible.

22 7. Uber’s and Lyft’s motivation for breaking the law is simple: by misclassifying their
23 drivers, Uber and Lyft do not “bear any of [the] costs or responsibilities” of complying with the
24 law. (*Dynamex, supra*, 4 Cal.5th at p. 913.) When addressing investors, Uber pulls no punches:
25 “Our business would be adversely affected if Drivers were classified as employees instead of
26 independent contractors.” (Uber Securities and Exchange Com. (“SEC”) S-1, p. 28 [Filing Date:
27 April 11, 2019].)
28

8. As one federal district judge recently observed: “[R]ather than comply with a clear legal obligation, companies like Lyft are thumbing their noses at the California Legislature” (*Rogers v. Lyft* (N.D. Cal. Apr. 7, 2020, No. 20-CV-01938-VC) __ F.Supp.3d __ [2020 WL 16484151, at *2].)

9. The State’s laws against employee misclassification protect all Californians. They protect workers by ensuring they receive the compensation and benefits they have earned through the dignity of their labor. (*Dynamex, supra*, 4 Cal.5th at p. 952.) They protect “law-abiding” businesses from “unfair competition,” and prevent the “race to the bottom” that occurs when businesses adopt “substandard wages” and “unhealthy [working] conditions,” threatening jobs and worker protections across entire industries. (*Id.* at pp. 952, 960.) They protect the tax-paying public, who is often called upon to “assume responsibility” for “the ill effects to workers and their families” of exploitative working arrangements. (*Id.* at p. 952-53.) They are a lifeline and bulwark for the People against the “erosion of the middle class and the rise in income inequality.” (A.B. 5, § 1(c).)

10. The time has come for Uber’s and Lyft’s massive, unlawful employee misclassification schemes to end. The People bring this action to ensure that Uber and Lyft ride-hailing drivers—the lifeblood of these companies—receive the full compensation, protections, and benefits they are guaranteed under law, to restore a level playing field for competing businesses, and to preserve jobs and hard-won worker protections for all Californians.

JURISDICTION AND VENUE

11. The Superior Court has original jurisdiction over this action pursuant to Article VI, Section 10 of the California Constitution.

12. The Superior Court has jurisdiction over each Defendant named above because:

(i) each Defendant is headquartered in the State of California; (ii) each Defendant is authorized to and conducts business in and across this State; and (iii) each Defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional notions of fair play and substantial justice.

13. Venue is proper under Code of Civil Procedure section 393(a), because each Defendant named above is headquartered in the City and County of San Francisco and thousands of the illegal acts described below occurred in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

14. Plaintiff is the People of the State of California, by and through: Xavier Becerra, the Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney; Mara W. Elliott, the San Diego City Attorney; and Dennis J. Herrera, the San Francisco City Attorney (collectively referred to as “Plaintiff” or the “People”).

15. Xavier Becerra is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17200 et seq.) He also has the statutory authority to bring an action for injunctive relief to prevent the continued misclassification of employees under A.B. 5. (Lab. Code, § 2750.3(j).)

16. The Los Angeles City Attorney, Michael N. Feuer, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

17. The San Diego City Attorney, Mara W. Elliott, has the statutory authority to bring actions in the name of the People of the State of California to enforce California’s UCL. As the City Attorney of a city with population in excess of 750,000, she also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

18. The San Francisco City Attorney, Dennis J. Herrera, has the statutory authority to bring actions in the name of the People of the State of California to enforce California's UCL. As the City Attorney of a city and county, he also has the express statutory authority under A.B. 5 to bring an action for injunctive relief to prevent the continued misclassification of employees. (Lab. Code, § 2750.3(j).)

II. DEFENDANTS

19. Defendant Uber Technologies, Inc. is a California corporation with its principal place of business in San Francisco, California.

20. Defendant Lyft, Inc. is a California corporation with its principal place of business in San Francisco, California.

21. The true names or capacities of Defendants sued as Doe Defendants 1 through 50 are unknown to the People. The People are informed and believe, and on this basis, allege that each of the Doe Defendants, their agents, employees, officers, and others acting on their behalf, as well as subsidiaries, affiliates, and other entities controlled by Doe Defendants 1 through 50 (hereafter collectively referred to as "DOES 1 through 50"), are legally responsible for the conduct alleged herein. The names and identities of defendants DOES 1 through 50 are unknown to the People, and when they are known the People will amend this Complaint to state their names and identities.

FACTUAL ALLEGATIONS

I. UNDER *DYNAMEX* AND A.B. 5, CALIFORNIA USES THE ABC TEST TO DETERMINE EMPLOYEE STATUS.

22. The California Supreme Court's 2018 decision in *Dynamex, supra*, 4 Cal.5th 903, along with the passage of A.B. 5, which went into effect January 1 of this year, have established that the ABC test governs the determination of whether a worker is properly classified as an employee or independent contractor for purposes of the Labor Code, the Unemployment Insurance Code, and the Wage Orders of the Industrial Welfare Commission ("I.W.C.").

23. Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, a hiring party, such as Uber or Lyft, has the burden of

1 establishing that *all* of the following three conditions are satisfied: (A) the worker is free from
2 the control and direction of the hiring entity in connection with the performance of the work, both
3 under the contract for the performance of the work and in fact; (B) the worker performs work that
4 is outside the usual course of the hiring entity's business; and (C) the worker is customarily
5 engaged in an independently established trade, occupation, or business of the same nature as the
6 work performed. (Lab. Code, § 2750.3(a)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.)
7 These three requirements are referred to as Parts A, B, and C of the ABC test, respectively.

8 24. Because the hiring entity must establish all three parts of the ABC test in order to
9 lawfully classify a worker as an independent contractor, the hiring entity's failure to satisfy any
10 one part of the ABC test results in the worker in question being classified as an employee rather
11 than an independent contractor. (*Dynamex, supra*, 4 Cal.5th at p. 963.)

12 **II. EACH DEFENDANT OPERATES A TRANSPORTATION SERVICE THAT**
13 **SELLS ON-DEMAND RIDES PROVIDED BY DRIVERS WHOM EACH**
14 **DEFENDANT HAS MISCLASSIFIED AS INDEPENDENT CONTRACTORS.**

15 25. For the purpose of this Complaint, "Drivers" refers to individuals who fall into one or
16 both of the following two categories. *First Category:* All individuals who have driven for Uber
17 as ride-hailing drivers in the State of California at any time since May 5, 2016 and who (1) signed
18 up to drive as a ride-hailing driver directly with Uber or an Uber subsidiary under their individual
19 name or with a fictional/corporate name *and* (2) are/were paid by Uber or an Uber subsidiary
20 directly under their individual name or with a fictional/corporate name for their services as ride-
21 hailing drivers. *Second Category:* All individuals who have driven for Lyft as ride-hailing
22 drivers in the State of California at any time since May 5, 2016 and who (1) signed up to drive
23 directly with Lyft or a Lyft subsidiary as ride-hailing drivers under their individual name or with
24 a fictional/corporate name *and* (2) are/were paid by Lyft or a Lyft subsidiary directly under their
25 individual name or with a fictional/corporate name for their services as ride-hailing drivers.
26 "Passengers" refer to individuals who receive Uber and/or Lyft ride-hailing services through such
27 Drivers.

28 26. Each Defendant operates a ride-hailing transportation service in which Passengers
may request and pay for on-demand rides from either Defendant by using that Defendant's

smartphone application (the “Uber App,” the “Lyft App,” “App” or “Defendant’s App” respectively, and collectively, “Apps” or “Defendants’ Apps”).

27. Each Defendant has hired hundreds of thousands of ride-hailing Drivers across the State of California to provide on-demand rides throughout the State to Passengers who book such rides through either Defendant’s App.

28. Lyft was founded in 2012 as a ride-hailing service of Zimride. Zimride later changed its name to Lyft, and subsequently sold the “Zimride” component of its business (a long-distance carpooling service) to focus on offering on-demand rides. As of January 2, 2020, Lyft had a market capitalization of approximately \$13 billion.

29. Uber was founded in 2009 as a ride-hailing service. As of January 2, 2020, Uber had a market capitalization of approximately \$53 billion.

30. Among the various ride-hailing options offered by Defendants, by far the largest is an option in which individuals with non-commercial drivers’ licenses provide on-demand rides to Passengers via each Defendant’s App using ordinary passenger vehicles. Lyft refers to this on-demand option as a “Lyft.” Uber refers to this option as “UberX.”

III. UNDER THE ABC TEST, EACH DEFENDANT MISCLASSIFIES ITS DRIVERS.

31. Since first launching their ride-hailing services, each Defendant has misclassified, and continues to misclassify, its Drivers as independent contractors instead of employees.

32. Each Defendant requires its Drivers, as a pre-condition of providing rides through Defendant’s App, to agree to standard-form contracts and addenda. Each Defendant’s contracts and addenda contain standardized terms and conditions that each Defendant sets regarding its Drivers’ work. Each Defendant’s contracts and addenda also contain boilerplate language unilaterally designating each Defendant’s Drivers as independent contractors.

A. Part A of the ABC Test (“control and direction”)

33. Each Defendant retains all necessary control over its Drivers’ work, which is to transport Passengers from point A to point B in a car.

34. Each Defendant's App, in combination with each Defendant's policies, functions like an algorithmic manager that effectively supervises its Drivers like a human manager.

35. Each Defendant determines what Drivers are eligible to provide ride-hailing services on its App and can change its Driver standards in its discretion.

36. Each Defendant dictates the types of cars its Drivers may use on its app, as well as the standards its Drivers' vehicles must meet. Each Defendant can change its vehicle standards in its discretion.

37. Drivers' tenure with each Defendant is for an indefinite time, but each Defendant retains the right to terminate or pause a Driver's tenure at any time in accordance with terms, conditions, and policies that each Defendant sets in its discretion.

38. Each Defendant sets the fares that Passengers pay for rides received through its App.

39. Each Defendant, not its Drivers, collects fare payments directly from Passengers.

40. Each Defendant sets the amount of compensation that it pays its Drivers for providing ride-hailing services to Passengers on its App.

41. Each Defendant handles invoicing, claim and fare reconciliation, and resolution of complaints that arise from its Drivers and Passengers.

42. Each Defendant mediates and resolves conflicts involving its Drivers in its discretion, ranging from Driver-Passenger disputes, to allegations of Driver or Passenger misconduct, to lost items, damaged vehicles, cleaning fees, and Driver complaints of not receiving the full amount of compensation for ride-hailing services provided through the App.

43. Each Defendant monitors its Drivers' work hours and logs a Driver off its App for six hours if the Driver reaches a twelve-hour driving limit.

44. Each Defendant does not freely permit its Drivers to choose their routes. For example, if a Passenger complains to a Defendant about the route used by a Driver, each Defendant reserves the right to adjust the fare if it decides that the Driver took an inefficient route.

Communication: Public Comment Supplements (PUBLIC COMMENT)

1 45. Each Defendant provides its Drivers with their work and pay by controlling the
2 dispatch of individual Passengers to individual Drivers through each Defendant's App. Each
3 Defendant's App controls which Drivers receive which ride requests and when.

4 46. Each Defendant controls and limits the information available to its Drivers and
5 Passengers through each Defendant's App, which each Defendant may change at any time
6 without notice.

7 47. When a Passenger requests an on-demand ride through Defendant's App, the App
8 shows and matches that Passenger with only one Driver at a time, regardless of the number of
9 nearby Drivers. Similarly, when a Driver is available to provide an on-demand ride, the App
10 shows and matches that Driver with only one Passenger at a time, regardless of the number of
11 nearby Passengers. Drivers and Passengers do not freely negotiate over the terms of an on-
12 demand ride. Instead, they are selectively steered to one another through the centralized direction
13 of the App.

14 48. Each Defendant's App hides from its Passengers key information about its Drivers'
15 experience and vehicles, limiting Drivers' ability to differentiate themselves and increase their
16 earnings in the way a true independent contractor or entrepreneur typically would.

17 49. Each Defendant's App allows its Drivers only approximately fifteen seconds to
18 accept or reject a trip request.

19 50. Drivers for each Defendant who consistently do not accept or reject trip requests
20 within the fifteen-second time limit may be temporarily logged out from each Defendant's App.
21 The length of this bar is within each Defendant's discretion.

22 51. Each Defendant's App tracks its Drivers. Drivers for each Defendant must notify the
23 respective Defendant through its App of the Driver's trip status at every key step of the on-
24 demand ride: (1) acceptance of the Passenger's ride request, (2) arrival to the pick-up location of
25 the Passenger, (3) start of the trip, and (4) end of the trip. Each Defendant uses its App to
26 constantly monitor and control its Drivers' behavior while its Drivers are logged into the App.

27 52. Each Defendant specifies detailed rules for Drivers to follow to create a uniform ride
28 experience from which each Defendant derives its brand recognition, reputation, and value.

1 These rules, which each Defendant bills as “suggestions” or “tips,” cover matters such as music,
2 how to pick-up Passengers, and what its Drivers can and cannot say to the Passengers.

3 53. Each Defendant retains the right to suspend or terminate its Drivers, or to cease
4 dispatching ride requests to its Drivers through its App at any time if its Drivers behave in a way
5 that Defendant deems inappropriate or in violation of a Defendant-mandated rule or standard.
6 These Driver behaviors can include, among other infractions, canceling too many rides, not
7 maintaining sufficiently high Passenger satisfaction ratings, or taking trip routes each Defendant
8 deems inefficient.

9 54. Each Defendant monitors, and ultimately controls, its Drivers through feedback it
10 solicits from its Passengers on every ride via a rating system that each Defendant uses to assess its
11 Drivers’ performance. Each Defendant’s App solicits feedback and prompts its Drivers and
12 Passengers to rate one another from one to five stars for each Defendant’s benefit, as each
13 Defendant uses the ratings for its own discipline of Drivers.

14 55. Each Defendant determines the type of data and feedback its Drivers and Passengers
15 may submit via its App. Each Defendant also defines on what basis its Passengers and Drivers
16 may provide feedback through its App.

17 56. Each Defendant uses information from its Passenger ratings to make decisions about
18 disciplining or terminating its Drivers. If the average rating of a Defendant’s Driver falls below a
19 certain threshold set by Defendant, Defendant may suspend or terminate that Driver from
20 providing ride-hailing services on Defendant’s App.

21 57. Each Defendant frequently experiments with software features that directly impact its
22 Drivers, creating an environment in which Drivers are subject to ever-shifting working
23 conditions, all determined in each Defendant’s discretion. According to Lyft, “We frequently test
24 driver incentives on subsets of existing drivers and potential drivers, and these incentives . . .
25 could have other unintended adverse consequences.” (See Lyft SEC 10-K, p. 20 [Filing Date:
26 February 28, 2020].) According to Uber, “[t]here are over 1,000 experiments running on our
27 platform at any given time.” (Deb et al., Under the Hood of Uber’s Experimentation Platform
28 (Aug. 28, 2018), <<https://eng.uber.com/xp/>> (as of May 1, 2020).)

1 58. Each Defendant introduces and then takes away features from its App in accordance
2 with its own business decisions. Each Defendant exerts control over its App, and thereby over its
3 Drivers.

4 **B. Part B of the ABC Test (“usual course of business”)**

5 59. Each Defendant’s Drivers are engaged in work that is within the usual course of each
6 Defendant’s business: the provision of on-demand rides. Each Defendant is a transportation
7 company that sells on-demand rides to its customers, i.e., its Passengers, who book and pay for
8 such rides through the Defendant’s App.

9 60. Drivers provide the on-demand ride. They are an integrated and essential part of each
10 Defendant’s transportation business. The immediate availability and temporal convenience of an
11 on-demand ride is the service that each Defendant sells to its Passengers.

12 61. Each Defendant publicly holds itself out to the public as a transportation company in
13 the business of selling on-demand rides.

14 62. Lyft has trademarked the slogan, “Your Friend with a Car.” Lyft advertises: “Get a
15 Ride Whenever You Need One”; “A ride in minutes”; and “Our drivers are always nearby so you
16 can get picked up, on demand, in minutes.”

17 63. Uber has trademarked the slogan, “Everyone’s Private Driver.” Uber advertises: “We
18 built Uber to deliver rides at the touch of a button”; “Always the ride you want”; “Request a ride,
19 hop in, and go”; “Sign up to ride. Rides on demand”; and “Get a reliable ride in minutes, at any
20 time and on any day of the year.”

21 64. Each Defendant represents to Passengers that it prescribes the qualifications of
22 Drivers on its App, as well as standards for Drivers’ quality of services. Each Defendant bills its
23 Passengers directly for the entire amount of the on-demand ride, and each Defendant’s Passengers
24 pay the fare for the service to each Defendant, not to the Driver. If a Passenger has an issue with
25 the quality of the on-demand ride provided through Defendant’s App, they report that problem to
26 Defendant, and Defendant may refund or cancel the Passenger’s fare.

27 65. Each Defendant is financially integrated with and dependent on its Drivers. Each
28 Defendant only generates income for its ride-hailing business if its Drivers transport and provide

rides to its Passengers. Each Defendant sets the fare its Passengers pay, collects the entire amount of the fare from its Passengers, and then disburses a percentage of those fares to its Drivers as compensation for providing the on-demand ride its Passenger ordered while keeping the remainder of the fare for itself. Without its Drivers' labor to provide Defendant's service, the on-demand ride, each Defendant's ride-hailing business would not exist.

66. Defendants do not facilitate a marketplace or matchmaking service between independent Drivers and Passengers. Instead, they utilize their substantial resources and technology to shape every facet of the service they sell to Passengers—a branded, on-demand ride. To offer an on-demand ride, Defendants use their technology to choreograph the deployment of countless Drivers in a localized geographic area, and integrate themselves into every aspect of how those Drivers provide the service of getting Passengers to their destinations.

67. Far from being a mere technology company, each Defendant is deeply enmeshed in the provision of transportation services. Each Defendant controls its Passengers' access to its on-demand ride service and its Drivers' access to providing such services. Each Defendant prescribes qualifications for its Drivers, determines its Driver supply, and designs and monitors the level and quality of service that its Drivers must provide to Defendant's Passengers. Each Defendant sets the fees, pricing, and incentives on its rides, and each Defendant uses its App to distribute its Drivers across a geographic area to provide an on-demand ride at a price and quantity that each Defendant, in its business discretion, deems the most beneficial to its business model and delivery of services.

68. Each Defendant also engages in extensive data collection and surveillance of its Drivers, tracking its Drivers' hours, movements, quality of services, and other metrics from when the Drivers log on to Defendant's App until they log off. Each Defendant uses this data to monitor and make disciplinary decisions regarding its Drivers, as well as for other business purposes.

69. Lyft's prospectus for its 2019 initial public offering ("IPO") describes how its overall business strategy depends on its Drivers. Lyft describes its growth strategy as "continu[ing] to add density to our ridesharing marketplace *by attracting and retaining drivers* to our platform to

1 further improve the rider experience.” (See Lyft SEC S-1, p. 1 [Filing Date: March 1, 2019],
2 emphasis added.) The prospectus identifies a “key factor” affecting Lyft’s performance as
3 “*maintaining an ample number of drivers* to meet rider demand in our ridesharing marketplace.”
4 (Id., at p. 88, emphasis added.) In response to the fundamental question underlying Lyft’s
5 business model, “Why Lyft Wins,” Lyft’s IPO prospectus definitively answers: because Lyft is
6 “Driver-Centric.” (Id., at p. 3.)

7 70. Uber’s prospectus for its 2019 IPO also describes how Drivers, and the labor they
8 furnish providing on-demand rides, are the lifeblood of its business strategy. Uber does not
9 mince words: “If we are unable to attract or maintain a critical mass of Drivers . . . our platform
10 will become less appealing to platform users, *and our financial results would be adversely*
11 *impacted* Any decline in the number of Drivers . . . using our platform *would reduce the*
12 *value of our network and would harm our future operating results.*” (See Uber SEC S-1, *supra*,
13 at pp. 29-30, emphasis added.) Uber’s business model begins and ends with its Drivers.

14 **C. Part C of the ABC Test (“independently established trade, occupation, or**
15 **business”)**

16 71. Each Defendant’s Drivers are not engaged in an independently established trade,
17 occupation, or business of the same nature as the work they perform for each Defendant. Driving
18 itself is not a distinct trade, occupation, or business.

19 72. When driving for each Defendant, Drivers are not engaged in their own transportation
20 business, but are instead driving Passengers and generating income for the respective Defendant.

21 73. There are no specialized skills or training necessary to drive passengers on a ride-
22 hailing service. Consequently, each Defendant permits Drivers without any such skills or training
23 to provide on-demand rides on its App. For example, both of Defendant’s largest ride-hailing
24 options, “Lyft” and “UberX,” permit Drivers to offer ride-hailing services with an ordinary
25 driver’s license and a personal vehicle.

26 74. Each Defendant provides its Drivers with a necessary tool and instrumentality to
27 perform their on-demand, ride-hailing services—its App.

1 75. Each Defendant's App is the exclusive means by which Passengers and Drivers can
2 connect to, request, and provide each Defendant's on-demand rides.

3 76. Each Defendant's Drivers generally invest little to no capital to drive for each
4 Defendant. To offer ride-hailing services on each Defendant's App, Drivers only need a
5 smartphone and a car.

6 77. Each Defendant directly shapes its Drivers' earnings, and thereby effectively prevents
7 its Drivers from attaining the profits and losses that would ordinarily be the hallmarks of running
8 their own independent businesses.

9 78. Each Defendant, not its Drivers, prescribes the key factors that determine its Drivers'
10 earnings. Each Defendant sets the prices charged to its Passengers, and controls its Drivers' rate
11 of pay, its Drivers' territory, the supply of its Drivers on the overall App, and the marketing and
12 advertising of each Defendant's brand.

13 79. The limited economic levers that each Defendant leaves to its Drivers, such as
14 whether to drive at busier times or for more hours, are not consistent with the level of decision-
15 making normally exercised by entrepreneurs or those operating their own independent businesses.

16 80. Each Defendant limits its Drivers' ability to freely decline and cancel rides that
17 Drivers think will be unprofitable.

18 81. Each Defendant limits its Drivers' ability to see all ride requests in an area, and thus
19 to gauge their potential earnings based on demand for their services.

20 82. Each Defendant limits its Drivers' ability to share their accounts with other Drivers,
21 thereby curtailing its Drivers' ability to individually expand their business offerings.

22 83. Each Defendant prohibits its Drivers from soliciting Passenger information, limiting
23 the ability of its Drivers to market themselves independently for repeat rides outside of
24 Defendant's App.

25 84. Each Defendant limits its Drivers' ability to take advantage of its App's financial
26 incentives in an entrepreneurial fashion. Each Defendant specifically targets individual Drivers it
27 invites to participate in various, time-limited financial incentives that, for example, reward
28 Drivers for driving longer, or for driving at certain times and places. These financial incentives

1 are targeted to individual Drivers based on each Defendant's own opaque criteria as implemented
2 by the algorithmic decision-making engines in its App. By selecting which Drivers will be
3 invited to participate in which financial incentives and on what individualized terms, each
4 Defendant, in effect, chooses which Drivers are financial "winners" and "losers." Each
5 Defendant as the employer, not the Driver as an "entrepreneur," determines the Driver's earnings.

6 85. Each Defendant controls its Drivers' ability to earn compensation via its App, making
7 trade-offs between its Drivers' earnings and the price each Defendant charges to Passengers to the
8 benefit of each Defendant's profit.

9 86. Lyft describes these trade-offs in its 2019 annual SEC report reporting that "changes"
10 made by Lyft "may be viewed positively from one group's perspective (such as riders)" and
11 "negatively from another's perspective such as (drivers)." (See Lyft SEC 10-K, *supra*, at p. 24.)

12 87. Uber's SEC filings describe how the "greatest impact" on Uber's Take Rate (the
13 company's "take" on the difference between the Passenger's fare on a ride and what the ride-
14 hailing company pays out to the Driver) has "historically" come through Uber's unilateral
15 "adjustments to Driver incentives." (See Uber SEC S-1, *supra*, at p. 100.) In its 2019 IPO
16 prospectus, Uber freely admits the control it exerts over its Drivers' earnings—and the fact that
17 Uber's own profit comes at its Drivers' expense: "[A]s we aim to reduce Driver incentives to
18 improve our financial performance, we expect Driver dissatisfaction will generally increase."
19 (*Id.*, at p. 30.)

20 **IV. DEFENDANTS' UNLAWFUL MISCLASSIFICATION OF DRIVERS** 21 **RESULTS IN UNLAWFUL AND UNFAIR BUSINESS PRACTICES.**

22 88. It is evident that neither Uber nor Lyft can meet their burden of showing that their
23 Drivers are independent contractors under California's ABC test for misclassification as adopted
24 in *Dynamex*, *supra*, 4 Cal.5th 903, and as codified in A.B. 5. Under Part A of the ABC test,
25 Defendants exercise control over their Drivers through their Apps, which, in combination with
26 their policies, function like algorithmic managers that effectively supervise Defendants' Drivers
27 like human managers. Under Part B of the ABC test, Drivers perform services within
28

1 Defendants' usual course of business—providing on-demand rides. Under Part C of the ABC
2 test, Defendants cannot show that Drivers have established independent businesses.

3 89. Uber claims that “Drivers are at the heart of our service” and Lyft claims that Drivers
4 are “what makes Lyft ... Lyft.” But by misclassifying their Drivers, Defendants have devised an
5 unlawful business model that denies these very same Drivers the protections and benefits they
6 have rightfully earned as employees, and thereby gained an unlawful and unfair competitive
7 advantage in the marketplace. Defendants' misclassification scheme hurts vulnerable Drivers,
8 undermines law-abiding competitors, evades Defendants' responsibility to contribute their share
9 as employers into the State's social insurance programs, and harms taxpayers who are often called
10 upon to address the negative consequences to Drivers and their families of Defendants'
11 exploitative employment practices.

12 **A. Defendants' unlawful misclassification deprives Drivers of their rights as**
13 **employees.**

14 90. Defendants' misclassification of their Driver workforce has allowed Defendants to
15 gain an unlawful competitive advantage over their competitors by circumventing the protections
16 and benefits that the law requires employers to provide to their employees. The laws violated by
17 Defendants include, but are not limited to, requirements relating to minimum wages, overtime
18 wages, business expenses, meal and rest periods, wage statements, paid sick leave and health
19 benefits, and social insurance programs.

20 **1. Minimum Wages**

21 91. The law requires Drivers to be paid the applicable state or local minimum wage for
22 each hour worked, regardless of the compensation formula or method.

23 92. Defendants do not guarantee their Drivers a minimum wage under state and local
24 laws. Instead, each Defendant pays its Drivers for completed rides based on the time and distance
25 of the ride and other factors dictated by each Defendant, including, but not limited to, dynamic
26 pricing pay surges, base rates, and minimum fares.

27 93. Defendants do not pay their Drivers for all their hours worked. Examples where each
28 Defendant fails to pay its Drivers include, but are not limited to, time spent refueling, time spent

1 cleaning and maintaining their vehicles, time spent for off-duty rest periods, time spent driving to
2 and returning from rides, and time spent logged on and monitoring each Defendant's App for ride
3 requests. Defendants cannot provide on-demand rides without the performance of these tasks.

4 94. Defendants have failed—and continue to fail—to meet their minimum wage
5 obligations with respect to their Drivers, including hours that are entirely unpaid and hours that
6 are paid at less than the applicable minimum wage.

7 **2. Overtime Wages**

8 95. The law requires Drivers to be paid the applicable overtime rate of pay—one-and-
9 one-half times or two times the Drivers' regular rate of pay—for all hours worked in excess of
10 forty per week, for all hours worked in excess of eight per day, and for all hours worked on the
11 seventh consecutive day of work in a workweek.

12 96. Defendants do not pay their Drivers overtime as required by law, despite the fact that
13 Drivers working overtime help Defendants to ensure the steady and constant supply of rides on
14 which Defendants' businesses depend.

15 97. Defendants have failed—and continue to fail—to meet these overtime pay obligations
16 with respect to their Drivers.

17 **3. Business Expenses**

18 98. The law requires Drivers to be paid or reimbursed for the necessary expenses in
19 performing their work.

20 99. Drivers pay for business expenses they incur in the course and scope of performing
21 their work for Defendants, including, but not limited to, vehicle expenses (wear-and-tear,
22 registration, insurance, gas, maintenance, repairs, etc.) and phone and data expenses associated
23 with using Defendants' Apps.

24 100. These expenses are substantial. For example, the Internal Revenue Service publishes
25 a "standard mileage rate," which currently estimates the cost of operating a vehicle for business
26 purposes at 57.5 cents per mile. Drivers provide ride-hailing services for Defendants using their
27 vehicles, without any reimbursement for this significant, work-related expense.
28

101. Defendants impose all the costs of operating the vehicles necessary to perform their ride-hailing business on Drivers, though Defendants could not operate their ride-hailing business without them.

102. Defendants have failed—and continue to fail—to meet these expense reimbursement obligations with respect to their Drivers.

4. Meal and Rest Periods

103. The law requires Drivers to be provided with one 30-minute duty-free meal period for a work period of more than five hours, and a second 30-minute duty-free meal period for a work period more than ten hours. The law further requires Drivers to be provided a ten-minute, paid, off-duty rest period for every four hours worked, or major fraction thereof. Authorized or required rest period time shall be counted as paid time worked.

104. Defendants do not provide for off-duty meal periods and do not authorize or permit paid, off-duty rest periods. Defendants do not provide a premium of one hour of pay at the employee's regular rate of compensation for each failure, as required by law.

105. Defendants have failed—and continue to fail—to meet these meal and rest period obligations with respect to their Drivers.

5. Wage Statements

106. The law requires Drivers to receive regular and complete itemized wage statements from Defendants, which include, as applicable, gross and net wages earned, hours worked, hourly wages, piece rate wages, rest period pay, and nonproductive time pay.

107. Defendants do not provide Drivers with itemized wage statements in conformance with California law.

108. Defendants have failed—and continue to fail—to meet these wage statement obligations with respect to their Drivers.

6. Paid Sick Leave and Health Benefits

109. The law requires Drivers to be provided paid sick leave benefits as specified under California law and various local laws, including, but not limited to, the Los Angeles, San Diego, and San Francisco sick leave ordinances.

110. The law currently requires Drivers in San Francisco to receive health care expenditures of \$3.08 per hour. In recent years the rate has ranged between \$2.53 and \$3.08 per hour.

111. Drivers do not accrue the paid sick leave benefits or receive the health care expenditures from Defendants that employers are required to provide under state and local law.

112. Defendants have failed—and continue to fail—to meet these sick leave and health care expenditure obligations with respect to their Drivers.

7. Social Insurance Programs

113. The law requires Defendants to remit contributions or take other mandatory actions under the State’s social insurance programs, including, but not limited to, unemployment insurance, disability insurance, paid family leave, workers’ compensation, and San Francisco’s Paid Parental Leave Ordinance.

114. These programs are intended to provide wage replacement and other benefits in the event an employee loses a job, becomes disabled or injured (whether on the job or off), needs to care for a family member, or is otherwise unable to work.

115. Defendants have failed—and continue to fail—to meet these social insurance program obligations with respect to their Drivers.

B. Defendants’ unlawful misclassification harms law-abiding competitors and would-be competitors.

116. Defendants’ unfair and unlawful treatment of their Drivers also confers an unfair advantage on Defendants over their law-abiding competitors and would-be competitors. Defendants utilize the illegitimate savings they gain from depriving their Drivers of the full compensation and benefits they earn as employees to offer their ride-hailing services at an artificially low cost, decimating competitors and generating billions of dollars in private investor wealth off the backs of vulnerable Drivers.

117. Defendants’ misclassification of their Drivers allows both companies to unlawfully reduce a substantial portion of the labor and vehicle fleet costs they would otherwise incur if they

1 lawfully classified and compensated their Drivers as employees, including reimbursing Drivers
2 for their vehicle maintenance and fuel expenses.

3 118. Because driver compensation, along with vehicle maintenance and fuel expenses,
4 generally constitutes the lion's share of operating costs for a car service, Defendants' illicit
5 savings allow them to gain an out-sized competitive advantage over other transportation
6 providers. Defendants' misclassification scheme unlawfully shifts the substantial labor and
7 vehicle costs of running a transportation service from well-resourced Defendants onto their
8 under-resourced Drivers, placing law-abiding competitors who bear those costs themselves at a
9 substantial competitive disadvantage.

10 119. In addition to avoiding paying Drivers for the full compensation and reimbursements
11 they earn as employees under state and local wage and hour laws, Defendants also avoid paying
12 their share of state and local payroll taxes and workers' compensation insurance premiums.

13 120. On information and belief, the illicit cost savings Defendants have reaped as a result
14 of avoiding employer contributions to state and local unemployment and social insurance
15 programs totals well into the hundreds of millions of dollars. Defendants' denial to Drivers of the
16 full compensation and benefits they are guaranteed under law as employees pushes the total
17 amount of Defendants' illicit cost savings over their law-abiding competitors—or would-be
18 competitors who cannot enter the market—even higher.

19 **FIRST CAUSE OF ACTION**

20 **INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF** 21 **BUSINESS AND PROFESSIONS CODE SECTION 17200** 22 **(Against all Defendants)**

23 121. The People reallege and incorporate by reference each allegation contained in the
24 above paragraphs as if fully set forth herein.

25 122. Defendants have engaged, and continue to engage, in acts or practices that are
26 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of
27 section 17200 of the Business and Professions Code. These acts or practices include, but are not
28 limited to, the following:

- a. Failing to classify Drivers as employees as required by Labor Code section 2750.3, I.W.C. Wage Order 9-2001, and California law;
- b. Failing to pay Drivers at least the California minimum wage for all time worked as required by Labor Code sections 1182.12, 1182.13, 1194, 1197, I.W.C. Wage Order 9-2001, section 4 (currently \$13.00 per hour for employers with 26 or more employees), and the California Minimum Wage Order (MW-2019);
- c. Failing to pay Drivers who worked in San Francisco at least the San Francisco minimum wage for all time worked as required by the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code, Chapter 12R (currently \$15.59 per hour);
- d. Failing to pay Drivers who worked in Los Angeles at least the Los Angeles minimum wage for all time worked as required by the Los Angeles Minimum Wage Ordinance, Los Angeles Municipal Code, Chapter 18, Article 7, section 187.00 et seq. (currently \$14.25 per hour);
- e. Failing to pay Drivers who worked in San Diego at least the San Diego minimum wage for all time worked as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code, Chapter 3, Article 9, Division 1 (currently \$13.00 per hour);
- f. Failing to pay Drivers the appropriate premium for overtime hours worked as required by Labor Code sections 510, 1194, 1198, and I.W.C. Wage Order 9-2001, section 3(A);
- g. Failing to reimburse Drivers for business expenses and losses as required by Labor Code section 2802;
- h. Failing to provide meal periods and pay meal period premiums as required by Labor Code sections 226.7, 512, and I.W.C. Order 9-2001, section 11;
- i. Failing to authorize, permit, and pay for rest periods and rest period premiums as required by Labor Code section 226.7 and I.W.C. Wage Order 9-2001, section 12;

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- j. Failing to provide Drivers with itemized written statements as required by Labor Code section 226, and failing to maintain and provide Drivers with records as required by I.W.C. Wage Order 9-2001, section 7;
- k. Failing to provide paid sick leave to Drivers as required by Labor Code section 246;
- l. Failing to provide paid sick leave to Drivers who worked in San Francisco, as required by the San Francisco Paid Sick Leave Ordinance, San Francisco Administrative Code, Chapter 12W;
- m. Failing to provide paid sick leave to Drivers who worked in Los Angeles, as required by the City of Los Angeles Paid Sick Leave Ordinance, Los Angeles Municipal Code section 187.00 et seq.;
- n. Failing to provide paid sick leave to Drivers who worked in San Diego, as required by the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code Chapter 3, Article 9, Division 1;
- o. Failing to make health care expenditures on behalf of Drivers who worked in San Francisco as required by the San Francisco Health Care Security Ordinance, San Francisco Administrative Code, Chapter 14;
- p. Failing to pay Drivers who worked in San Francisco as required by the San Francisco Paid Parental Leave Ordinance, San Francisco Police Code, Article 33H;
- q. Failing to pay unemployment insurance taxes for Drivers as required by Unemployment Insurance Code section 976;
- r. Failing to pay Employment Training Fund taxes for Drivers as required by Unemployment Insurance Code section 976.6;
- s. Failing to withhold and remit State Disability Insurance taxes for Drivers as required by Unemployment Insurance Code section 986;
- t. Failing to withhold and remit state income taxes for Drivers as required by Unemployment Insurance Code sections 13020 and 13021;
- u. Failing to provide workers' compensation for Drivers as required by Labor Code section 3700; and

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v. Failing to provide other rights and benefits to Drivers under the Labor Code, I.W.C. Wage Order 9-2001, and other local employee protection laws.

123. Each Defendant's misclassification of its Drivers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provision of Labor Code section 2750.3, and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California's Unfair Competition Law. (Bus. & Prof. Code, §17200 et seq.)

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF FOR VIOLATIONS OF A.B. 5 (Labor Code § 2750.3) (Against all Defendants)

124. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

125. A.B. 5 permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2750.3(j).) This action may be prosecuted by the Attorney General, or by a City Attorney of a city having a population in excess of 750,000, or by a City Attorney in a city and county.

126. Each Defendant continues to misclassify its Drivers as independent contractors.

127. The People seek an order of this Court, pursuant to Labor Code section 2750.3(j), to prevent the continued misclassification of each Defendant's Drivers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, that each Defendant, their successors, agents, representatives, employees, and all persons who act in concert with each Defendant, be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code section 17200 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

2. Pursuant to Business and Professions Code section 17203, that the Court enter all judgments as may be necessary to restore to any person in interest any money or property that may have been acquired by violations of Business and Professions Code section 17200 as may be proved at trial;

3. Pursuant to Business and Professions Code section 17206, that each Defendant be assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions Code section 17200 et seq., as proven at trial;

4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL perpetrated against a senior citizen or disabled person, as proven at trial;

5. Pursuant to Labor Code section 2750.3(j), an order to prevent each Defendant from continuing to misclassify its Drivers as independent contractors;

6. That the People recover their costs of suit; and

7. Such other and further relief that the Court deems appropriate and just.

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1 Dated: May 5, 2020

Respectfully Submitted,

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